



Chapter Three

APPRAISAL

MONTANA RIGHT-OF-WAY
OPERATIONS MANUAL

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Chapter Three

APPRAISAL

The Constitution of the State of Montana, Article II Section 29, states that “*private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the landowner.*”

The Montana Legislature implemented this provision through a series of Statutes that indicate that just compensation includes the value of the property and improvements sought to be acquired by the Department. If the property sought to be acquired constitutes only a part of a larger parcel, just compensation includes the depreciation in current fair market value that will accrue to the remaining parcel by reason of its severance from the portion to be acquired and the construction of the improvements in the manner proposed by the Department. See ***Montana Code Annotated (MCA)*** 70-30-301(b)(c) and 70-30-302.

In arriving at a conclusion of just compensation, an approved appraisal report is necessary to ensure compliance with the State Constitution. The appraisal report contains the appraiser’s estimate of fair market value, all data on which the opinion is based and a narrative explanation supporting the appraiser’s conclusions. The appraisal report is a written statement that is independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. The appraisal report is of critical importance to further right-of-way activity in acquisition, property management, relocation assistance and record purposes. It must be complete and reliable in all its contents.

3-1 INTRODUCTION AND ADMINISTRATION

3-1.1 Introduction to Appraisals

Chapter 3 provides guidance and direction toward understanding State and Federal laws and policies as they apply to the Department’s appraisal of right-of-ways. Most readers should already have a solid understanding of the appraisal process; however, this Chapter should still be of benefit to the trainee, experienced right-of-way agent or review appraiser. It is to assist the trainee appraiser to understand right-of-way valuation techniques and also provide those with more experience with a reminder of the numerous matters that must be considered in the appraisal process.

This Chapter is designed to guide persons involved in both the preparation of appraisals and the management of appraisal functions within the Right-of-Way Bureau (Bureau). It presents formats that will:

- conform to State and Federal policies regarding the appraisal of real estate for the purpose of acquiring right-of-way and the appraisal of excess properties;
- ensure that the appraiser has considered all required items in arriving at the conclusion of value;
- maintain a uniform method of appraisal report writing that supports the Bureau's review, acquisition, relocation and property management functions; and
- ensure that the value is fair to the individual whose property is acquired, to other landowners on the project and to the public who pays for it.

3-1.2 Appraisal Personnel

Appraisers engaged in appraisal activities for the Department fall into 2 general categories:

1. Full-time employees of the Department are referred to as staff appraisers or staff review appraisers.
2. Appraisers who are employed under contract for specific assignments are referred to as fee appraisers, contract appraisers or specialty appraisers.

3-1.2.1 Staff Appraisers

Staff appraisers are employees of the Department who are classified as right-of-way agents or review appraisers who prepare appraisals.

3-1.2.2 Qualifications for Right-of-Way Agents

The following requirements must be met to qualify as a right-of-way agent:

1. Education. A high school diploma is required. Advanced education beyond high school is desired but not mandatory. Preferred fields of experience and/or education include business administration, economics, engineering, agriculture, real estate or other fields related to the appraisal of real property.

Before they will be given a regular appraisal assignment, right-of-way agents must have passed a basic appraisal course, sponsored by the Department, or an equivalent course given by one of the professional appraisal organizations that is approved by the Bureau.

2. Experience. The individual must have knowledge of accepted appraisal practices and of Montana Eminent Domain law.
3. Other. The individual should be of good character and be recognized as a person of unquestionable integrity.
4. Trainee Appraiser. Trainee appraisers are right-of-way agents who are in the process of gaining appraisal experience by doing on-the-job appraisal assignments while furthering their appraisal education. During this period, the trainee will be provided with appraisal training courses as available.

3-1.2.3 Staff Review Appraisers

Staff review appraisers are employees of the Department who have been selected on the basis of experience, education, demonstrated appraisal abilities and integrity. Selection of review personnel is recommended by the Bureau Chief following consultation with the Appraisal Supervisor after completion of the Department selection process. Review appraisers work under the direct supervision of the Appraisal Supervisor.

Review appraisers may be temporarily assigned to other appraisal duties such as for training, when heavy or unusual appraisal workloads dictate, or when there is a special need for review appraiser services and/or experience.

3-1.2.4 Qualifications for Staff Review Appraisers

The following requirements must be met in order to qualify for the position of review appraiser:

1. Education. A Bachelor's Degree in Real Estate, Business Administration, Finance, Economic, Engineering or related field. Verified active appraisal experience in eminent domain acquisition may be substituted for a college education on a year-for-year basis.

The individual must have attended and passed 2 basic appraisal courses and 2 advanced appraisal courses sponsored by the Department or equivalent courses

given by any of the professional appraisal organizations that are approved by the Bureau.

NOTE: The designation of a course as basic or advanced is at the discretion of the Bureau. In deciding the appropriateness of the approval, the Appraisal Supervisor will consider the course content, length, sponsoring organization and applicability to appraisal work.

2. Experience. The individual must have a thorough knowledge of all appraisal practices, methods and techniques and must have at least 6 years of verified active experience as an appraiser, including 1 year in eminent domain.
3. Other. The individual should have a character that is beyond reproach and be recognized by fellow members of the profession as being honest and a person of integrity.

3-1.2.5 Fee Appraisers

Fee appraisers are individuals who provide appraisal services under contract for a specific parcel or project. Appraisers providing appraisal services to the Department are subject to the requirements contained within this Chapter.

3-1.2.6 Specialty Appraisers

Specialty appraisers specialize in the valuation of items such as expensive equipment, fixtures or mechanical apparatus. They are not full-time employees of the Department and they provide their valuation services under contract to the Department.

A specialty valuation report is usually combined with other information within an appraisal report. The education and experience requirements for specialty appraisers are at the discretion of the Appraisal Supervisor.

Prior to contracting with the Department, a specialty appraiser must provide a complete and detailed resume of those qualifications and experience relating to their specialty.

3-1.2.7 Specialty Consultants

It is sometimes necessary for the Department to employ experts with a specialty in a particular field of knowledge (e.g., geology, hydrology, timber, range, soils or other fields). For appraisal purposes, these specialty consultants will be employed only with

the approval of the Appraisal Supervisor. If the appraiser determines that a specialty consultant might be required, the appraiser should contact the Appraisal Supervisor.

Compensation for specialty consultants will be based on the complexity of the problem, the skill and experience of the consultant, and their ability to provide the service within the desired timeframe.

3-1.3 Appraisal Assignments

3-1.3.1 Assignment

Assignment of staff appraisers is generally made by the District Right-of-Way Supervisors. It is the responsibility of the Appraisal Supervisor to determine that the appraiser is qualified to appraise the particular type of property or properties to be appraised. The Appraisal Supervisor or the review appraiser prior to the appraisal assignment will draft the scope of appraisal.

Care in making an assignment commensurate with the appraiser's qualifications will be most beneficial to the Bureau's specific operations and the Right-of-Way Program in general.

When determining appraisal assignments, the District Right-of-Way Supervisor will consider the differences between the 3 categories of appraisal assignments and the available staff or contract personnel. The 3 categories of assignments are uncomplicated appraisals, less complex appraisals and complex appraisals.

The general process for staff appraiser assignments is:

1. The District Right-of-Way Supervisor coordinates with the Appraisal Supervisor to decide which staff appraiser(s) should be assigned or if fee appraisers should be hired for the work.
2. The District Right-of-Way Supervisor meets with the appraiser assigned and arrives at a reasonable due date. This date will take into consideration the complexity of the assignment, the anticipated letting date, projected vacations, holidays, probable court appearances, present workload and any other items that might affect the completion date.
3. After an appraiser is assigned to a project, the completion of the assignment is of utmost importance, and the appropriate supervisor should make every effort not to interrupt the appraiser by assigning additional duties or projects that could be performed by other personnel.

4. The appraiser is expected to meet the due date with well-supported and acceptable appraisals in accordance with this Chapter.
5. Delays that are due to plan revisions or prolonged illness may be unavoidable. Should these affect the appraiser's ability to meet the due date, the appropriate supervisor may assign a new completion date or reassign the appraisal to another appraiser.

3-1.3.2 Due Dates

Due dates for assignments must precede scheduled ready dates, allowing sufficient time to complete the appraisal, appraisal review and acquisition processes. Whenever practical, the due date should correlate with the anticipated completion date for the activity.

3-1.3.3 Supervision

The responsibility for supervising appraisers is vested with the Appraisal Supervisor, who is responsible for the quality of the product produced and the indication of appraised value to be used by others within the Department.

The District Right-of-Way Supervisors will have direct supervision of staff personnel assigned to determine the value of properties having an estimated compensation of less than \$10,000. When the assignment is for a property that may have complex appraisal issues or one that is being appraised for condemnation, supervision of assignments with values less than \$10,000 may revert to the Appraisal Supervisor.

Direct supervision of staff personnel assigned to appraise properties with compensation estimated to be in excess of \$10,000 and of all contract appraisers will be by the Appraisal Supervisor.

3-1.4 Independent Appraisals

When more than 1 appraiser is assigned to appraise the same parcel, the Bureau should furnish each appraiser with identical material and legal instructions. Each appraiser should make an independent inspection of the property being appraised. Each finding of value should be independent of the opinion of value of any other appraiser working on the same parcel. Joint inspection may be permitted if it is specifically requested by the property owner and approved by the Appraisal Supervisor.

3-1.5 Confidentiality of Appraisals

Because the Department is a State agency, disclosure of Department materials, including staff and fee appraisal reports, is governed by the policy balancing the “public right to know” against the “right of individual privacy.” Notwithstanding an appraiser’s statement to the contrary, an appraisal report may be subject to disclosure to persons other than those intended by the appraiser. Generally, unless it is anticipated that a parcel acquisition will proceed to condemnation, the property owner has a right to receive a copy of Department materials, including appraisal reports. Because the conflict between disclosure and privacy is complex, or when a parcel is proceeding to condemnation, the disclosure issue should be decided in consultation with the Department’s legal staff.

3-1.6 Conflict of Interest

All activities of the appraisal process will be conducted in a professional and ethical manner. To avoid conflicts of interest and to preserve the integrity of appraisers, the following Department procedure must be adhered to:

It is incumbent upon every appraiser to report immediately to the Appraisal Supervisor any case in which relationship, personal friendship, ownership, or other interests might be construed to be in conflict with providing an unbiased opinion of value. Failure on the part of any employee to comply with this provision will be grounds for disciplinary action up to and including termination.

This requirement also extends to any review appraiser who believes that a conflict of interest or a perceived conflict might prevent the review appraiser from reviewing an appraisal fairly and rendering an unbiased determination of just compensation.

A fee appraiser must also refuse an assignment or report immediately to the Appraisal Supervisor any case in which a relationship, personal friendship, ownership or other interest might be construed to be in conflict with providing an unbiased opinion of value.

If the Appraisal Supervisor determines that there may be a real or perceived conflict of interest, the parcel will be reassigned to another appraiser or review appraiser.

3-1.7 Title VI of the Civil Rights Act of 1964

Any qualified individual must have equal opportunity, without discrimination of any kind, to contract for appraisal work and/or cost estimates with the Bureau. This includes the following:

1. The Bureau will actively recruit qualified minority and female fee appraisers by maintaining liaisons with the Civil Rights Bureau, professional appraisal societies, and the State Real Estate Certification and Licensing Board.
2. Fee appraiser selection will be made giving consideration to the following:
 - complexity of work to be undertaken and skills necessary to provide services,
 - the individual's experience in appraising the type of property involved,
 - availability of the appraiser to complete the assignment in the time allowed, and
 - location and conditions pertinent to the project.

Equal opportunity to bid on or make estimates for appraisal documentation must be afforded to all persons in the area who do this work regardless of age, color, race, creed, national origin, gender, marital status or political beliefs.

3-1.8 Disadvantaged Business Enterprise Participation

The Department is required by law to provide equal access for participation in any project or contract for professional services to Disadvantaged Business Enterprises (DBEs). In order to be placed on the list of qualified appraisers and/or contractors, qualifications of DBE appraisers and contractors must meet the same requirements and criteria as non-DBEs. To accomplish this goal, the Appraisal Supervisor should:

1. Obtain the names of qualified DBE appraisers and contractors from the DBE Directory published by the Civil Rights Bureau–DBE Program or advertise in general circulation, trade association and minority-focus media.
2. Notify qualified DBE appraisers of any future contracts for appraisal services. Preferably, this should be on a personal basis, as in a telephone contact, and in sufficient time to allow the DBE to participate effectively.

3. Solicit bids from qualified DBE appraisers on each project within their general office/work area.

It is important to document all procedures for each right-of-way project by keeping a copy of all correspondence and replies in the project general files and DBE general file. This should include written notes to document personal and/or telephone contacts with any DBEs regarding employment.

3-2 POLICIES AND PROCEDURES

3-2.1 Appraisal Standards

An appraisal report is a written statement that is independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specific date and supported by the presentation and analysis of relevant market information. The supporting data should be of sufficient depth and documentation to confirm the analysis and reasoning behind the appraiser's conclusions. The format and level of documentation required are dependent on the assignment as well as the complexity of the appraisal problem to be solved.

The appraisal report must be complete and reliable in all its contents. It will contain information about the properties and general aspects of the entire project. The appraisal will be made in accordance with the highest professional methods and ethical standards and with constant regard to the rights of the property owner and the citizens of Montana.

To be eligible to receive Federal funds in program activities, the Department is obligated to comply with Montana Statutes, the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)***, and the Federal rules and regulations of the Federal Highway Administration (FHWA). These requirements form the fundamental criteria for appraisal and appraisal review practices by the Department.

Although the ***Uniform Standards of Professional Appraisal Practice (USPAP)*** provides excellent appraisal guidance, appraisers for the Department must comply with the Department's appraisal policies as outlined in this Chapter. Department policy does not minimize or circumvent the intent or purpose of ***USPAP***. Rather, Department policies recognize the limitations of ***USPAP*** in dealing with matters that are germane to transportation right-of-way acquisition (e.g., eminent domain acquisitions, partial takings, multiple appraisals, project consistency). ***USPAP's Jurisdictional Exception Rule*** allows law or public policy to supersede ***USPAP*** rules.

The ***Uniform Appraisal Standards for Federal Land Acquisition (UAS)*** also provides excellent appraisal guidance, as do many available appraisal textbooks. However, appraisers must comply with the provisions of this Chapter or as directed by the Appraisal Supervisor.

3-2.2 Eminent Domain Appraisals

The appraisal of real property for eminent domain acquisition has requirements that are not necessarily found in appraising properties for other purposes. The purpose of this Chapter is to aid the appraiser performing services for the Department and to instruct new appraisers.

Appraisal under eminent domain is quite varied and has a tendency to create unique valuation problems. Therefore, with the exception of the minimum criteria, criteria and guidelines should not be considered as rigid rules that must be applied, without modifications, in every instance. Unique appraisal problems sometimes require modification of the appraisal process and the appraisal report by the appraiser to ensure that the specific appraisal problem is adequately addressed and that the appraiser's final conclusion to value is reasonably accurate. Appraisers may deviate from these criteria and guidelines in those unique cases in which deviation is required to solve the appraisal problem properly and when this deviation can be adequately justified.

An appraisal report that fulfills all requirements of the Department's guidelines still may be unacceptable due to substance (e.g., inadequate investigation or interpretation of market facts, improper application of appraisal techniques and analyses or conclusions based on misleading, inaccurate or inadequate data).

Appraisers performing professional services for the Department are responsible for thoroughly familiarizing themselves with the Department's appraisal policies and procedures. Determinations concerning the acceptability or non-acceptability of specific techniques, processes or policy as well as technical guidance may be requested from the Appraisal Section.

3-2.3 General Policies

Fair Market Value for all property rights affected by State projects must be determined or otherwise valued prior to acquisition.

3-2.3.1 Technical Assistance, Training and Guidance

The Appraisal Supervisor, review appraisers and Special Programs Section Supervisor are responsible for providing technical assistance, training and guidance to staff appraisers and fee appraisers as requested.

3-2.3.2 Valuation Advocacy Is Considered Unethical

Any appraiser providing appraisal or review services must do so as a neutral party. The findings of the appraisal or the review are to be based on accepted appraisal practice and information obtained from the market and disclosed in the appropriate report. Any appraisal or review that is performed to justify or indicate a predetermined value is considered to be unethical and will be rejected.

3-2.3.3 Appraisals to be Reviewed

All appraisals prepared for MDT for use on Federal-aid projects will be reviewed by a qualified review appraiser.

3-2.3.4 Number of Appraisals

Generally, only 1 appraisal is required for each parcel to be acquired or disposed; however, the Appraisal Supervisor may require additional appraisals. The number of appraisals should be based on many factors, including the compensation for the parcel and the complexity of the appraisal.

3-2.3.5 Number of Appraisal Reports

Generally, unless instructed otherwise, the appraiser must submit 3 original copies of the appraisal. For condemnation appraisals, 4 original copies must be submitted. For fee appraisers, specify the number of copies in the appraisal services agreement.

3-2.3.6 Types of Valuation Reports

The types of specific appraisal reports to be prepared by the appraiser are determined by the District Right-of-Way Supervisor or the Appraisal Supervisor, which are listed below:

1. Determination of Value. When compensation is less than \$10,000 and meets the requirements as described in Section 4-3.3, the parcel will be valued using a Determination of Value (Form RWN-170). These valuations are the responsibility of the District Right-of-Way Supervisor and are subject to the supervisor's review and approval.

2. Form Appraisal To Acquire Right-of-Way. When compensation is greater than \$10,000, the appraisal will be prepared using the Appraisal Report (Form RWA-155).
3. Form Appraisal to Sell Excess Land or to Acquire Property other than Right-of-Way. For these conditions, use the Appraisal Report (Form RWA-152).
4. Modified Before and After Narrative. A narrative format may be used at the discretion of the Appraisal Supervisor or when required by Legal Services staff for condemnation.

3-2.4 Deviations

3-2.4.1 Deviations from Policies or Procedures

The Appraisal Supervisor must approve, in writing, any deviations from the policies and procedures set forth in this Chapter. Significant deviations will be routed through FHWA for their review and approval.

3-2.4.2 Deviations from Right-of-Way Plans

Appraisals will be based on the approved construction and right-of-way plans. Any deviation from these plans will not be accepted without either the plans being changed or prior approval. Include an explanation of the deviation in the appraiser's assumptions and limiting conditions and appraisal history.

3-2.4.3 Design Changes

Sometimes, the provision of construction features or the alteration, modification or addition to design plans may provide a viable alternative to compensation that is otherwise payable for depreciation. When a possible mitigation measure is identified, the appraiser should develop reasonable economic justification or other sound reasoning to support the recommended change. Design changes for projects designed in-house should be reported to the District Right-of-Way Supervisor. Design changes for projects designed by consultants should be reported to the contract administrator.

3-2.5 Owner Rights

3-2.5.1 Bundle of Rights Theory

The Bundle of Rights Theory typically uses the metaphor of a bundle of sticks in which each stick represents a property right associated with ownership. The owner of single or multiple rights has the ability to use, sell, lease, enter, give away or do nothing with the rights that are owned.

3-2.5.2 Fee Simple Estate

Full ownership of all of the rights to real property is commonly known as a “fee simple estate.” The owner of the fee simple estate holds “fee simple title.” A fee simple interest is still subject to the following 4 inherent powers of Government:

1. The Power of Taxation. The ability to collect taxes and, if not paid, to take the property for payment of the tax debt.
2. The Power of Eminent Domain. The ability to take property for the public good upon payment of just compensation.
3. The Power of Escheat. The ability of the Government to take title to property when the owner dies leaving no will or heirs.
4. The Police Power. The ability to regulate private property for public health, welfare and safety.

The Department typically acquires fee simple title to property that was acquired for transportation purposes. Hence, appraisals should be premised on the value of the fee simple estate.

The appraiser should identify any encumbrances associated with a subject property and should take into consideration their effect on the value estimate. If there is any encumbrance or the retention of any right, then appropriate assumptions and limiting conditions must be included in the report.

3-2.6 Special Assessments

To the extent practical, appraisals should be based on the current fair market value of the property as if it is free-and-clear and unencumbered. If the subject property is encumbered by special assessments and the comparable sales are not, the appraisal

must address the effect the assessments may have on value. All special assessments on the property under appraisal must be identified in the appraisal report.

3-2.7 Contacting Owners/Lessees of Subject Property

3-2.7.1 Owners

Unless instructed otherwise by the Appraisal Supervisor, the appraiser must contact the owner of the subject property or the property owner's agent and offer the opportunity for that person to accompany the appraiser in an inspection of the property. If the property owner or with the owner's representative cannot be contacted, or if he or she elects not to accompany the appraiser on the inspection, it should be noted in the appraisal history.

In all cases, the appraiser in his or her position as a representative of the Department must be considerate and courteous in dealing with the owner or the owner's representative. Good public relations at the appraisal stage can definitely aid in subsequent negotiations. If an owner informs the appraiser of sales information, the appraiser should let the owner know that the information provided will be confirmed and considered in the valuation process.

3-2.7.2 Lessee(s)

When there is a leasehold interest in the subject property or when the subject has tenant-owned improvements, the appraiser should contact the lessee or an appointed representative. This includes properties owned by other State and Federal agencies.

3-2.8 Larger Parcel

3-2.8.1 Determination of the Larger Parcel

The larger parcel is a premise that is unique to eminent domain valuation. The term "larger parcel" means the entire property that should be appraised. It is important in eminent domain situations to include all of the owner's lands that qualify in order to determine the tract(s) that may be damaged or benefited by the acquisition.

The ultimate determination of the larger parcel is the responsibility of the appraiser and must be determined when analyzing highest and best use. Generally, the larger parcel must have unity of title, unity of use and contiguity. Some Federal courts and some

States, including Montana, do not require contiguity where there is a strong unity of use. See *State Highway Commission v Renfro*, 161 Mont. 251, 256, 505 P.2d 403, and 406.

The term “larger parcel” cannot be found in general appraisal textbooks; however, a meaningful and useful definition of larger parcel can be found in the **UAS**. It reads:

The larger parcel is defined as that tract, or those tracts, of land which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

The determination of the larger parcel is particularly important in partial acquisitions because compensable damages and/or special benefits may accrue to the remainder. It is possible for the larger parcel to contain several independent economic uses. At times, it is proper to value a portion or an affected area of the larger parcel. If an affected area is valued instead of the entire ownership, a description providing information and the rationale behind establishing the affected area as an economic unit is needed in the appraisal. An affected area should be supported as a readily achievable economic unit and is not to be confused with the acquisition area of a partial acquisition. The intent is not to artificially subdivide property. A plat delineating the larger parcel (economic unit) must be included in the appraisal.

On the other hand, the highest and best use of the part taken may be so related to the entire property that the value of the part taken for its highest and best use is dependent on the value of the entire tract.

Use caution in determining an affected area to be appraised. Damages cannot accrue to or be considered off-site or outside of the affected area of the larger parcel. Damages cannot be mitigated off-site or outside of the affected area of the larger parcel.

If there is a question as to the legal acceptability of the appraiser’s determination of the larger parcel, the appraiser should obtain legal instructions and/or advice from Legal Services.

3-2.8.2 Contiguous Properties

Contiguous tracts of land are generally adjoining. However, in Montana, separation by a street, road or railroad does not necessarily break contiguity. Separated tracts connected by leased land or by legal access across intervening land also would serve

to support contiguity. The appraiser is responsible for examining the impact of intervening ownerships and how they affect the larger parcel. For example, 2 tracts of land separated by a gravel-surfaced county road could be considered contiguous, whereas 2 similar tracts of land separated by an Interstate highway should probably not be considered contiguous. The appraiser should be aware that the parcelization as shown on the Right-of-Way plans is prepared by the Bureau's Design/Plans Section and may differ from the appraiser's determination of the larger parcel.

Montana law indicates that where tracts of land are non-contiguous but of the same ownership and used in a common enterprise, depreciation to the remainder tract affected by the acquisition is allowable. However, depreciation to a separated non-contiguous tract that does not constitute a part of the larger parcel is not allowable.

3-2.9 Just Compensation

Under the ***Uniform Act***, the head of the agency or his or her delegate is responsible for establishing "just compensation." In the Department, this responsibility has been delegated to the review appraiser subject to the Appraisal Supervisor's ultimate authority. The appraiser gives an opinion of fair market value or an estimate of just compensation. The Staff Review Appraiser or the Appraisal Supervisor establishes the offer of just compensation. In condemnation cases, just compensation can be resolved by settlement. Otherwise, the courts make the final determination of just compensation.

It is the intent of "just compensation" to make the owner of an impacted property "whole." In other words, as a result of just compensation, the property owner is no worse off after the acquisition as the property owner was prior to the acquisition. This does not mean that the affected property owner will be in exactly the same situation after the taking as before, but the intent is that the owner will be no richer or poorer by reason of the acquisition.

3-2.10 Benefits

When a property is found to have benefited from or been enhanced by a project in a manner that there is an increase in value, this benefit can only be credited against depreciation to the remainder. The benefit cannot be applied against the value of the property acquired. Benefits, as well as depreciation, to the remainder must be apparent and must accrue at the time of the acquisition. Neither benefits nor depreciation should be speculative in nature.

3-2.10.1 Special Benefits

A “special benefit” is a project-related value increase that is special to a specific property and is not enjoyed by the general public in vicinity of the project. In assessing the application of special benefits, the following must be considered:

1. The benefit must be to a specific parcel of property.
2. The benefit must be direct and proximate to the construction.
3. The benefit must be a vested benefit, the acquisition of which would be a compensable item.
4. The benefit must not be speculative, remote or contingent in nature.
5. The benefit must have become vested at the date of service of summons (for condemnation cases) or time of acquisition for all others.
6. The benefit must increase the actual or usable value of the property along with the market or saleable value of the property.

Under Montana law, special benefits to the remainder can only be used to offset depreciation to the remainder. In the event that special benefits exceed depreciation, the property owner is still entitled to receive the full current fair market value of the land and improvements actually acquired.

3-2.10.2 General Benefits

Any benefits that are not “special” may be properly considered “general” benefits. These are benefits that affect an entire area or community in a manner that they increase the value of all of the properties located in the area or community. For example, the reconstruction of a roadway makes travel safer and allows the road to carry a larger volume of traffic safely. The result may be that land in the area is more attractive for subdivision, and the value increases. General benefits cannot be used to offset depreciation to the remainder.

3-2.11 Depreciation to the Remainder

When the State acquires a portion of a property, State law requires that compensation be made for the part acquired and for any depreciation in the current fair market value of the remainder. The depreciation must be directly caused by the acquisition or by the

use to which the part acquired will be put. This depreciation often is referred to as “severance damages.”

The extent to which the utility of the property has been restricted and its fair market value diminished must be established by factual data. It must be fully supported by the facts in each case. Reasonable discussion of physical conditions pertinent to the entire property before the acquisition and of the remainder after the acquisition is necessary to determine whether there has been a diminution in the fair market value of the remainder because of the acquisition.

The appraiser must identify and analyze both adverse and beneficial effects and fully explain their economic impact on the property. When the remainder is specially benefited as a result of the project, the amount of the benefit is to be deducted from the depreciation to the remainder.

3-2.12 Non-Compensable Items

3-2.12.1 Non-Compensable Depreciation to the Remainder

Appraisal reports approved by the Department cannot include compensation for components that generally are not compensable under the law.

On a proposed partial acquisition for transportation purposes, the appraisal analysis and report will give no consideration to any impacts resulting from the exercise of the State’s police power. Because this is a sovereign power of the State, impacts resulting therefore are classified as “*damnum absque injuria*” (i.e., damage without violation of legal rights).

Examples of these impacts are loss of traffic volume and change in direction of traffic flow or circuitry of travel. This also includes the denial of the right to cross an existing highway from one part of the property to another unless there is an existing retained right. Any one of these impacts could result in a material loss, especially to a business, but remains as a non-compensable loss suffered by the owner. A loss caused by the overall effect of the project on the neighborhood is not compensable. The damage to the property interest must be unique from that suffered by the public in general.

No consideration will be given to any damage insofar as it may create an annoyance or inconvenience to the owner personally. Prime examples are the existence of noise, fumes or dust or the loss of light, air or view. Regardless of how much these things may upset the aesthetic sensibilities of the owner, as long as they do not affect the market value of the remainder, no depreciation to the remainder is to be assessed. However, if

the appraiser finds that, by reason of the improvement to be constructed on the acquired land, there will be noise, fumes, dust or loss of light, air or view that will directly affect the current fair market value of the remainder, then these factors may be considered. No specific short-term loss of value may be allowed for any particular factor, but the measure of depreciation in current fair market value, if any, must be reflected in the fair market value of the remainder.

The matter of whether an impact is compensable or non-compensable presents a particular dilemma to the appraiser because the problem is not whether the depreciation exists, but whether it is compensable. Because this is a legal rather than an appraisal matter, the appraiser should request legal instructions from the Department legal staff. Although the appraiser's personal opinion may not be in agreement with the legal instructions, the report must be made in accordance with those instructions. The resulting value would be "subject to legal instructions" rather than an "instructed value."

3-2.12.2 Other Non-Compensable Items

Other items generally found to be non-compensable in Montana include:

- future use — frustration of plans;
- temporary impairment of access;
- annoyance and inconvenience suffered by the public in common;
- damages remote, speculative or contingent;
- damages resulting from an inability to secure another location;
- trade fixtures not considered real estate;
- loss of business income;
- payment for illegal usage of the property; and/or
- payment for unauthorized usage of property (e.g., encroachments).

3-2.13 Encroachments

Encroachments are improvements that are located either partially or totally within the existing right-of-way. Encroachments generally are not compensable. The appraiser should contact the Appraisal Supervisor for additional instructions if questions concerning encroachments are encountered.

3-2.13.1 Appraisal of Encroachments in Existing Right-of-Way

If a property owner has an improvement encroaching on the existing right-of-way, the appraisal must identify that the improvement or portion thereof is an encroachment. Although the appraiser must determine the value of the encroachment contributes to the owner's whole property, without concern for the right-of-way limits, do not include the encroachment's contribution value in the summation of the parcel's fair market value for just compensation. The appraisal should cite the encroachment's contribution value separately.

3-2.13.2 Allowing Encroachments within the New Right-of-Way

Encroachments typically will not be allowed to remain within the right-of-way. An exception to that policy may be when it is in the best interest of the State (e.g., when it is too costly to remove, unable to be replaced, historical in nature or in mitigation of proven damages). The District Administrator and the Bureau Chief will approve, in writing, any of these encroachments. If the appraiser finds a situation in which these conditions may exist, contact the Appraisal Supervisor for instructions. Also see Chapter 7.

3-2.14 Minimum Payment Policy

The minimum payments described below will be granted whenever the estimated compensation is less than the amount indicated:

1. Minimum Payment for Permanent Property Interests. When the parcel acquisition includes acquiring permanent property interests by deed or easement and the total compensation for the parcel is less than \$500, the minimum payment will be \$500.
2. Minimum Payment for Temporary Use of Property. When the parcel acquisition only includes acquiring temporary rights to occupy and use property (e.g.,

construction permits, haul roads, etc.) and the total compensation for the parcel is less than \$300, the minimum payment will be \$300.

3. Minimum Payment for Combined Permanent Property Interests and Temporary Use of Property. When the parcel acquisition includes acquiring both permanent and temporary interests and the total compensation is less than \$500, the minimum payment will be \$500.

The appraisal report should show the estimated compensation as well as the applicable minimum payment.

3-2.15 Market Value

3-2.15.1 Current Fair Market Value

Generally, the appraisal assignment is to estimate market value of a property as defined under Montana law and regulations. Current fair market value is defined in **MCA** 70-30-313 as follows:

Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors: (1) the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use; (2) the machinery, equipment, and fixtures forming part of the real estate taken; and (3) any other relevant factors as to which evidence is offered.

This definition of value must be included in the appraisal report and must be the basis for all value estimates prepared for the Department except in situations in which “value in use” is being determined.

In addition, for value estimates of property that is acquired under the power of eminent domain, the appraiser must consider the following:

1. Disregard any decrease or increase in current fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner.
2. Disregard the fact that the owner might not want to part with the land because of its special adaptability to the owner’s use.

3. Disregard the fact that the Department needs the land because of its peculiar fitness for its purpose.
4. Disregard any “gain to the taker” (i.e., not give consideration to the special use of the condemnor as against others who may not have the right of eminent domain).
5. Include the value of any buildings, structures or improvements that are required to be removed or that are determined to be adversely affected by the use to which the real property will be put, regardless of whether the buildings, structures or improvements are classified as real or personal property under local laws. The value of the buildings, structures and improvements is based on their contribution to the fair market value of the real property to be acquired or their value after removal from the real property (salvage value), whichever is greater. This includes tenant-owned buildings, structures or improvements, even if the tenant has a right or obligation to remove the buildings, structure or improvements at the expiration of the lease term and even if they are classified as personal property under State law.

3-2.15.2 Value in Use

Generally, the purpose of an appraisal that is prepared for the Department is to estimate the current fair market value of the larger parcel. However, and this would be rare, there may be situations when the appraiser is assigned to estimate the “use value” (i.e., value in use) of the parcel. Court decisions and specific negotiation situations are instances that may create the need for a value in use appraisal. In these instances, the appraiser should obtain legal instructions and/or advice from the Appraisal Supervisor.

The ***Dictionary of Real Estate Appraisal*** defines “use value” as follows:

Value in use is the special value a property has based on its current use by its current owner(s).

In estimating “value in use”, the appraiser focuses on the value the real estate contributes to the enterprise of which it is a part, without regard to the property’s highest and best use or the monetary amount that might be realized from its sale. Use value varies depending on the management of the property and external conditions, including changes in business operations. For example, a manufacturing plant designed around a particular assembly process may have one use value to the enterprise “as is” and a substantially different use value following a technology change or a shift in market or distribution conditions. For example, an older factory or multi-level light industrial building still used by the original firm may have considerable use value to that firm, but only a nominal market value for another use and/or user.

Value in use also may extend to properties that typically are considered as special purpose. Examples of these properties are houses of worship, museums, schools, public buildings, clubhouses, car washes, banks, mill sites, cemeteries, golf clubs, hospitals, nursing homes, theatres and specialized industrial uses depending on the market in which the property is located.

3-2.16 Highest and Best Use

The appraiser's determination of highest and best use is the foundation on which fair market value is established. Appraisal skills and a clear understanding of market activity are needed to identify and justify the highest and best use conclusion in the appraisal report. The highest and best use must be physically possible, legally permissible and financially feasible, and must result in the highest value return to the property.

First, the highest and best use of land as if vacant is determined; then, if the land is improved, the highest and best use of the property as improved is determined.

3-2.16.1 Nonconforming Use of Properties

Occasionally, a property to be acquired enjoys a nonconforming use that is a higher and better use than the one allowed by the zoning laws of the regulatory authority with jurisdiction over the property. Appraisers should consult with the Appraisal Supervisor regarding any special instructions for these conditions.

3-2.16.2 Highest Supportable Value versus Highest and Best Use

The highest supportable value should be based on the highest and best use of a subject property. The fundamental premise of highest and best use is that use that produces the greatest return to the property. Atypical sales within the marketplace should not have undue influence in establishing value based on highest and best use.

3-2.17 Approaches to Value

There are 3 approaches to value used in appraisals — the cost approach, the sales comparison approach and the income capitalization approach. Generally, each of the 3 approaches to value should be considered within the appraisal report. However, the application of the 3 approaches will vary due to the complexity of the appraisal problem.

3-2.17.1 Sales Comparison Approach

The sales comparison approach is the most widely used and recognized of the 3 approaches. In this approach, similar sale properties are compared directly to the subject property. Ideally, the appraiser will find and use 3 or more recently sold properties that are similar to the subject.

In the sales comparison approach, adjustments are made to address any differences that may affect the value of the comparable property. The adjustments are always made so that the value of the comparable property being considered is adjusted up or down after direct comparison to the subject. Generally, adjustments are generated from the marketplace, but they also may be made via a cost basis. Within any appraisal, all adjustments made to comparable sales should be made in a consistent manner.

Typically, sales are compared to the subject as land and improvements combined with consideration of adjustments for items including market conditions, location, size or utility. The analysis of an indicated value for the subject is by adjustment of the comparable sales and not by isolating different components and adding them together. The sales typically will indicate a range in value. The most comparable sale, or the one that would require the least adjustment, typically would be the best indicator of the subject's value.

When the sales analysis doesn't support a dollar and/or percentage adjustment, a bracketing technique and/or a qualitative analysis may be applied if the appraiser can support this technique with a reasonable explanation.

If the sales comparison approach is not used in the appraisal, the appraiser is responsible for explaining and supporting the reason(s) for excluding the approach from the report.

3-2.17.2 Cost Approach

The cost approach is very accurate when it is used on new or newer improvements. It is most applicable when it is used for properties that have unique or atypical improvements or where there is a lack of comparable sale information. With few exceptions, though, an attempt should be made to apply the cost approach to all improved property.

The value of an improvement is determined through calculation of a replacement/reproduction cost new (RCN), less depreciation. RCN may be extracted from market

information, based on estimates to construct, or determined from cost manuals, based on information obtained from the market.

If a pricing manual or service is used, the appraiser should identify the manual/service used, the effective date of the manual and the classification applied. The appraiser should use the manual values closest to the effective date of the appraisal or make appropriate time adjustments. To aid a reader/user of the report, the appraiser also should include references to the section and page number of the base value and any modifiers or multipliers applied to the calculation. If not included in the report, this information is to be retained in the appraiser's working files and made available to the reader/user upon request. Pricing schedules used by the Department may have limitations placed on them, and the appraiser should be aware of these.

Each time a contractor's estimate is obtained and applied to a subject property, the appraiser is applying a cost approach to the subject. To estimate the RCN cost of an improvement, local contractor estimates are a source that should be applied whenever practical and reasonable.

Observation and market information should be used to determine the applicable accrued depreciation. The use of comparable sales to support depreciation applied to an improvement is desired, whenever practical. The appraiser should analyze sufficient sales information to estimate the value of the land associated with a sale and the contribution value of the improvements. Whenever practical, identify individual improvements and their contribution value to the sale. The difference between the RCN value of the improvement and the contribution value of the improvement would result from accrued depreciation from all possible sources. Further analysis may enable the appraiser to break down accrued depreciation even further to curable physical depreciation, incurable physical depreciation, curable functional depreciation, incurable functional depreciation or external (economic) depreciation.

The appraiser should be fully aware of the principle of supply and demand and must consider that the sum of the parts may or may not equal the value of the whole.

The cost approach is not complete until the indicated value of the improvements is combined with the land value to arrive at an overall value for the subject.

If the cost approach is not used in the appraisal, the appraiser is responsible for explaining and supporting the reason for exclusion of the approach from the report. Difficulty in estimating accrued depreciation is not an acceptable reason for not applying the cost approach. But, it may be part of the reasoning used in the reconciliation portion of the report for not relying as heavily on this approach as on one or both of the other approaches.

3-2.17.3 Income Capitalization Approach

In the income capitalization approach, an appraiser uses market-based data to analyze a property's capacity to generate future benefits and then converts (capitalizes) these benefits into an indication of present value. The value determined through this approach is based on market information. There are 2 different capitalization methods — direct capitalization and yield capitalization.

Direct capitalization is a method used to convert an estimate of a single year's income expectancy into an indication of value in 1 direct step — either by dividing the income estimate by an appropriate income rate or by multiplying the income estimate by an appropriate income factor. For additional guidance; see ***The Appraisal of Real Estate***.

Although the direct capitalization method is simple and easily understood, it tends not to examine other details that might affect a sale and, therefore, it may not be as accurate as a more detailed analysis like the yield capitalization method.

Yield capitalization is a method used to convert a property's future benefits into present value by discounting each future benefit at an appropriate yield rate or by applying an overall rate that explicitly reflects the investment's income value, change in value and yield rate. There are many different applications of the yield capitalization method.

Theoretically, the income capitalization approach can be applied to all properties — both improved and unimproved. Even if the subject property does not generate income at the time of the appraisal, the income approach should be applied if the market indicates that the subject could generate income and if potential relationships between income and comparable sales information can be found to indicate a value of the subject. In other words, the application of this approach is not dependent on any current income produced by the subject, but on what the market indicates would be market rate for the subject based on comparable properties. Current income should be examined in comparison to market income, and any differences should be taken into consideration in the valuation process.

If the income capitalization approach is not used in the appraisal, the appraiser is responsible for explaining and supporting the reason(s) for excluding the approach from the report.

3-2.18 Comparable Property Data

3-2.18.1 Arm's-Length Transactions

The Dictionary of Real Estate Appraisal defines an arm's-length transaction as

A transaction between unrelated parties under no duress.

Many transactions occur that do not have any influences placed on them by the marketplace. These usually are not arm's-length transactions. Because the desired result of an appraisal is current fair market value, it is important to evaluate sales as the market influences them. Therefore, the appraiser must evaluate information used in the appraisal report for compliance with the elements of an arm's-length transaction.

3-2.18.2 Confirmation of Comparable Sale Data

It is the Department's desire and good appraisal practice that a principal party to the real estate transaction, preferably the buyer, be used as the primary source of information about the transaction. Confirmation of market information from principals is important to be able to understand the motivations of buyers and sellers. Because appraisers may be called on to testify about the information obtained through their investigation, it is important that secondary sources of information be avoided. In addition, the buyer and seller may provide information or raise issues of which a real estate broker may not have knowledge.

If the principals cannot be reached or will not provide the sale information, the appraiser may use other available sources. These should be limited to the real estate broker or some other person who was directly associated with the transaction and who would have personal knowledge of details associated with the transaction. Because the use of the sale may be questioned, the appraiser will have to weigh the amount of other information available and the potential use of the sale as it applies to the appraisal assignment. The appraiser should document efforts to contact the principals. The documentation should include dates of attempts to contact the principals and all phone numbers and addresses used in the attempts.

Staff appraisers may use sales data that has been confirmed by other staff appraisers without further confirmation unless the data appear to need clarification. Ultimately, all appraisers are responsible for the data provided in their reports.

To enable a reader/user of the appraisal to be able to verify the information contained in the report, the report must identify the specific source of the sales confirmation information.

3-2.18.3 Confidential Sales or Lease Information

The use of confidential sales or lease information is not acceptable. For the reader/user to be able to form an accurate opinion of the information contained in an appraisal, the source and complete details must be available. If there is no reasonable expectation that the information used in the report can be verified, the credibility of the report can be questioned.

3-2.18.4 Real Estate Listings

Due to a lack of comparable sales data, listings may have to be used, but they should not be relied on heavily. Generally, listings indicate the upper end of the market. In some markets, listings may affect valuation.

If the subject property is listed for sale, include the listing information in the appraisal report.

Listings are subject to the same verification and reporting requirements as those associated with comparable sales. For any comparable listing provided, identify the amount of time on the market and any changes in pricing. Also include information for listings prior to the current listing.

3-2.18.5 Comparable Lease Information

The use of lease information is common to the application of the income approach to value. To aid a reader/user, provide detailed and verifiable information for any property used for comparable lease/expense information. Develop a data sheet, similar to that used to identify comparable sales, to aid in examining the applicability of the information and the comparability of the property.

3-2.18.6 Confirmation of Market Data Used

Information used in an appraisal report as an indication of contractor estimates, rental income or expenses, vacancy rates or any other information that would affect the valuation process is to be confirmed with a person who provides this type of service or activity or who has direct knowledge of this information. In the appraisal report, identify the specific source of any confirmed information.

3-2.19 Making Adjustments to Comparable Sales

It is fundamental appraisal practice to make adjustments to the sale price of comparable sales to indicate the value of the subject property. The ability to generate adjustments will vary with the quality and quantity of information available, as well as with the skill of the appraiser. It is the responsibility of the appraiser to identify and explain the use of any given adjustment. Adjustments for size, market conditions, location or other individually identifiable components ideally should be supported by data from the market. Unsupported adjustments are not acceptable.

3-2.19.1 Sales-Based Adjustments

Determining adjustments from the market is ideally based on the use of “matched pairs” in which individual components affecting value are identified and isolated for an indication of value. Exercise caution when using only 1 pair of sales to indicate an adjustment. Multiple comparisons of paired sales usually will generate range of value adjustments for the same component of adjustment. In the absence of matched-pair data or when otherwise deemed appropriate by the appraiser, qualitative adjustments may be used if they are adequately explained by the appraiser.

3-2.19.2 Comparable Sales Used for Adjustments

Comparable sales used only to determine adjustments are subject to similar reporting requirements for any other comparable sales and generally should have the same level of basic information provided. Although verification by a principal is encouraged for all comparable sales used in an appraisal report, it is not considered as critical for sales that are used only to generate adjustments within a report. If the appraisal is prepared specifically for a condemnation case, then sales used to generate adjustments also should be verified.

3-2.19.3 Cost-Based Adjustments

When there is no market information for an adjustment, or the information that can be determined is for a group of items, the appraiser may elect to apply a cost-based adjustment. A depreciated cost estimate is generated for the item as of the date of sale and is applied to the sales price of a comparable sale to adjust the sale to the subject.

3-2.19.4 Application of Extracted Adjustments

Adjustments derived from market information are only a representation for the date of sale or timeframe covered. To extrapolate the adjustment beyond the date of sale or timeframe covered, the appraiser is required to make assumptions that should be stated and supported within the report.

The appraiser is not relieved from considering general market activity during the intervening period from the date of sale, or last date of the timeframe, and the date of appraisal. For example, a period of appreciating values followed by stabilizing or reduced values could cause problems if the adjustment is derived from the growth period and applied over the period of stabilizing or reduced values.

Multiple indicators of adjustments generally will represent a range of adjustments that might be made to the property. Often, ranges will be the result of multiple variations, so their presentation should portray them this way.

3-2.20 Contribution Value

Current fair market value of any component of a sale is what the component would contribute to the value of the whole property. Often, this value is not the same as what would be found for the value of the component if it were offered for sale separately from the rest of the property.

The principle of contribution value states that the value of a particular component is measured in terms of its contribution to the value of the whole property or as the amount that its absence would detract from the value of the whole.

When analyzing sales data, the appraiser must isolate values to determine the value a component or group of components would contribute to any given sale. Establishing a component's contribution value is especially important for making sales adjustments or for isolating the contribution value of components that may be affected by the Department's acquisition.

Often, the appraiser is left with no direct market data and must default to a cost value for an estimate of contribution value. This estimate may be higher than actual contribution value, and the appraiser should use caution. For example, a swimming pool added to a property in Arizona would contribute more to that property than one in Great Falls, even though the cost might be the same. The contribution value for an individual item acquired from a group of similar items might have a lower contribution value because of the group of items even though the cost for each would be the same.

For example, the only tree on a property would probably contribute more to a site than a similar tree that is removed from a group of trees on a similar site.

When items in a group of components cannot be isolated from one another through an analysis of market information, a study of their costs can allow an allocation of the indicated market contribution value derived for the group. Where practical, this should be completed for multiple comparable sales in order to establish a market relationship.

3-2.21 Valuation of Improvements

Improvements within the proposed right-of-way acquisition area generally are acquired with the land unless it is in the best interest of the State to either allow the improvements to remain within the right-of-way as an encroachment or to replace/relocate the improvements on the property owner's remaining land.

The value of all improvements will be based on their contributory value to the whole property. However, it is recognized that many site improvements cannot be separated from the whole property value, nor can they be distinguished separately in the market. The appraiser must simply provide sufficient research and analysis to explain the appraiser's estimate of contributory value rationally.

3-2.21.1 Bisected Improvement

A bisected improvement is a structure that is severed by the proposed right-of-way line. Give special consideration to bisected improvements in the appraisal process and in recommending values. If the part of the bisected improvement remaining outside of the right-of-way cannot be reconstructed (cost-to-cure) economically to restore utility, or if there is nothing but salvage left, the entire structure may be purchased to avoid the impractical situation of acquiring a segment and leaving a useless remnant. In these cases, the appraiser is to determine the value of the portion within the acquisition area, the balance will be addressed as depreciation to the remainder, and an offer will be made to buy the uneconomic remnant.

If the part of the bisected improvement outside of the right-of-way can be repaired (cost-to-cure) economically to restore utility, then it normally would not be acquired. The appraiser would establish the contribution value for that portion within the right-of-way and a cost-to-cure for the repairs. However, other considerations including aesthetics or zoning may make it suitable to cure the damage to the affected improvement and let it remain.

NOTE: The restoration of “utility” referred to in both of the previous paragraphs does not necessarily mean restoration to the same use as the improvement had prior to the acquisition, but means restoration to a functional utility that would still contribute more value to the site than the cost of any repairs.

Generally, the cost to acquire that portion that falls in the acquisition area and the cost to reconstruct a bisected improvement cannot exceed the original contribution value of the improvement to the whole property.

3-2.21.2 Misplaced Improvement

Occasionally, an improvement will be left in an impractical situation due to a change in the right-of-way. Give special consideration to misplaced improvements in both the before and after conditions. For example, the right-of-way severs the parcel, leaving improvements on different sides of the road. The appraiser must consider any loss of value to the property resulting from decreased utility of these improvements.

3-2.22 Fixtures (Personalty vs. Realty)

3-2.22.1 General

The Department is allowed to compensate a property owner only for real property acquired and loss in value caused to remaining real property. No payment can be made for personal property. Proper legal classification of a particular item of property, therefore, often is necessary.

MCA 70-1-105 provides that “property is either (1) real or immovable; or (2) personal or movable.” **MCA** 70-1-106 states:

Real or immovable property consists of:

- *land,*
- *that which is affixed to land, and*
- *that which is incidental or appurtenant to land.*

Generally, an item is affixed to land when it is attached to land by roots, imbedded in land, permanently resting on land, or permanently attached to what is permanent by means of cement, plaster, nails, bolts or screws.

Identifying an article as personalty or realty requires a determination as to whether or not it is a “fixture” as determined by law. The term “fixture” generally is used to denote

an article of personal property that has become so annexed to land or attached to buildings as to become part of the realty. There is no definitive rule classifying certain property as a fixture or not. The determination must be made in the field. However, the Appraisal Supervisor will assist and, if necessary, the appraiser may seek a legal opinion from the Department's Legal Services. Generally, the determination is predicated on the following:

- Has there been a real or constructive annexation or attachment of the personalty to the realty?
- Was there a fitness or adoption of personalty to the uses or purposes of the realty to which it is connected?
- Was it the intention of the party making the annexation that the personalty become a permanent part of the realty?

Intent of the parties is the most compelling factor in the determination. The appraiser should obtain copies of any agreements between owners and tenants regarding any items of personalty and then seek advice from counsel.

All fixtures that were considered as part of the real property in the appraisal should be listed both in the appraisal report and on the salvage appraisal form.

3-2.22.2 Mobile Homes

It is generally held that a mobile home loses its vehicular status and becomes a fixture when all or even a portion of the following occurs:

- the wheels have been removed;
- the axles have been removed;
- it is placed on a basement or foundation;
- it is bolted or otherwise attached to the land;
- utility lines are attached;
- water and sewer lines are attached;
- it is skirted; and/or
- improvements (e.g., decks, entryways, garages) are added.

Common ownership of realty and personalty is not determinative. Lease agreements can change the nature of a fixture to personalty if the lessee is permitted by the lease to remove it at the end of the lease term. Similarly, movable personalty may become realty if the lease requires that the item remain at the end of the lease term.

3-2.23 Valuation of Property with Multiple Interests

Where there are multiple ownership interests or estates in a subject parcel (e.g., leaseholder, stockholder, shareholder or partnership interests), the parcel is to be appraised as if it were in a single ownership. The appraiser must obtain information indicating what interests or rights are held by each interested party and then allocate the current fair market value among the interest or rights.

3-2.23.1 Leasehold Interest

The value of a leasehold interest is based on the rights transferred to a lessee by a lease agreement. A lease agreement may be either written or oral. If there is no lease agreement, Statutes govern the relationship of the parties. Improvements made to the real property by the lessee during the lease period may constitute a part of the leasehold interest. In some cases, State and/or local law may affect the value of leasehold interests. The appraiser is responsible for determining the extent of the rights of each party and the value of the leasehold interest. The compensation will be an allocation of the current fair market value of the whole based on the interests of each party.

It is essential appraisal practice to obtain a copy of any rent or lease agreement containing terms that spell out the rent to be paid. The rent specified in the agreement is the contract rent for the property. To determine the market rent, the appraiser should survey the market to find comparable rented properties. If the appraiser finds a difference between the market rent and the contract rent of a subject property, and if that difference benefits the lessee, then a leasehold interest is created that requires an allocation of value to the lessee. Place a copy of the lease agreement in the addenda of the appraisal report so that a reader/user can understand the rights of each party.

3-2.23.2 Tenant-Owned Improvements and/or Fixtures

Compensation for tenant-owned improvements and/or fixtures (leasehold improvements) affected by the acquisition is the amount that the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater (49 **CFR** 24.105(c)). The contribution value for the property affected is to be allocated between the lessor and the lessee according to their rights and interests.

3-2.24 Easements

The appraisal of an easement constitutes a valuation of only a portion of the fee interest. The appraisal process and support are the same as for other types of property rights. Give consideration to the rights acquired, any separate rights owned by others that already may be encumbering the property and the rights remaining with the underlying fee ownership.

If the encumbrance results in a significant devaluation of the property, or if the extent or effect of the easement is unclear or disputed, it may be necessary to appraise the property as encumbered and as if the easement were discharged.

3-2.24.1 Purchasing Easements

It is Department policy that the amount to be paid for any highway right-of-way easement will be 95% of the market value of the fee interest. However, the use of lands covered by the easement, the capability for other uses in addition to Department expected uses, and other factors may determine the actual easement value. If the appraiser believes that the value of the easement should be less than or greater than 95% of market value, the appraiser must explain the rationale.

3-2.24.2 Existing Public Road Easements

Existing public road rights-of-way held by easement by local government entities may be incorporated within a new highway easement without further compensation. The existing easement area is not to be appraised.

On the other hand, when an acquisition of right-of-way incorporates an existing public easement, the easement does not have to be valued, and no compensation is paid to the holder of the easement. However, the owner, whose property is subject to the public easement, is entitled to compensation for the additional rights acquired by the Department to convert the easement to fee.

3-2.24.3 Public Utility Easements

In many instances, easements for public utilities exist on the property to be acquired. In these cases, the Department will acquire title subject to whatever utility easements are in the area of acquisition. Because utility easements generally are relocated, the

appraisal should be made on the value of the land as though it is unencumbered by the public utility easements.

3-2.24.4 Irrigation or Drainage Easements

The acquisition of right-of-way for a highway project may require the relocation of irrigation or drainage ditches. If an easement is to be secured, it will be valued at 95% of the land value unless a different value is indicated by one of the following factors:

- Is the land to be encumbered with the easement already encumbered by another's ditch or easement? If so, what rights remain with the fee owner and what rights does the owner of the easement now control?
- Would a new easement or ditch cause depreciation to the landowner's remaining property?
- Would the new ditch encumber more land or a different type of land than the existing ditch, considering area for construction and maintenance?
- What rights are being acquired, what rights remain and are there any benefits because of the relocation?

In relocating an easement or a ditch, no distinction between the value of the adjoining land and the ditch-encumbered land is required.

3-2.24.5 Conservation and Preservation Easements

Any appraisal of property that is encumbered with a conservation or preservation easement must recognize the effect of the easement on the fee value. Show the contributory values of the separate interests in the appraisal; however, the sum of the separate interests cannot exceed the whole. Incorporate a copy of the easement in the addenda of the appraisal report so that a reader/user of the report may fully understand the potential impact of the agreement.

3-2.24.6 Temporary Construction Easements

The Department cannot condemn property for construction permits. Consequently, construction permits must be changed to temporary construction easements prior to condemnation. Therefore, when an appraisal is being completed for a condemnation case, any area previously indicated as construction permit area must be converted to a

temporary construction easement. Also see Section 3-2.25 for a discussion of the valuation of construction easements.

3-2.25 Construction Permits

3-2.25.1 Construction Permits/Temporary Construction Easements

The following formula should be used to calculate the value of most construction permits or temporary construction easements:

$$\text{Land Value} \times 10\% \times \text{Term of Permit (Years)}$$

A different percentage may be used if the rationale is explained adequately.

When valuing the construction permit/easement, the appraiser needs to understand why the permit is needed, what work will be performed in the permit area and the impacts of the work in the permit area. If remainder areas are impacted negatively (e.g., changes in topography), compensation should address the impact as well as the use of the permit area. Discussion in the appraisal and/or additional discussion in the assumptions or limiting conditions may be appropriate.

The appraisal must clearly indicate the period of time for which the construction permit is needed. The effective duration of a construction permit should be based on a time period covering the proposed letting date of the project through the approximate date of completion of the project. Round the period up to the nearest year (e.g., 18 months would be rounded to 2 years). This may vary when the appraiser can verify that the area of the construction permit will be needed for a period other than the anticipated construction period. The minimum term of any construction permit is 1 year.

Although MDT will make every effort to restore the area of the construction permit/temporary construction easement to pre-construction condition, the appraiser must assume that there will be some disturbance of this area. Disturbance may include, but not be limited to, placement of fill for slopes and approaches or a change in the amount of topsoil in the area. Compensation for the construction permit/temporary construction easement includes compensation for any disturbance.

3-2.25.2 Permanent Construction Features within the Permit Area

Permanent construction features (e.g., cuts, fills, culverts, ditches) typically should be located within a more permanent right-of-way than a construction permit area to protect

the long-term interests of the Department for the protection and maintenance of features. It is appropriate for the appraiser to inquire wherever or not these features are located on an easement or within the permanent right-of-way. Notification may result in a plan change that may affect the appraisal assignment. Simply placing a higher value on the construction permit for a potential impact does not necessarily resolve any potential issue(s), nor does it afford any additional protection. The appraiser is responsible for considering the impacts and correctly addressing them in the determination of compensation. If permanent construction features are to remain within a permit area, considerations like long-term depreciation may have to be made.

3-2.25.3 Construction Permits on Railroad Properties

Compensation for construction permits on railroad properties will be based on 10% of fee value using “across the fence values” for a term of two years unless reasoning for a longer term is provided (See 3-3.11).

3-2.26 Cost-To-Cure

3-2.26.1 General

As a general policy, no work is performed directly for the Department in the adjustment of improvements. Because of the inherent liabilities and contract requirements, the preferred procedure is to compensate the owner so that the owner can perform any adjustments needed, or retain and move any improvement under the owner’s supervision and direction. Adjustments are performed by the State only in exceptional cases and only with written approval of the Appraisal Supervisor.

The cost-to-cure is often used to mitigate depreciation to the remainder. In situations where a property has suffered depreciation to the remainder that can be physically and economically corrected (e.g., the replacement of sewage or water systems, re-establishment of paved parking or internal access, replacement of cross fencing, resurvey of property lines), the cost of correcting the defect is an acceptable measure of the estimate of compensation due the property owner. The appraiser is responsible for documenting the rationale for using the cost-to-cure as the measure of depreciation. Generally, the cost-to-cure measure of depreciation should be applied only if the cost-to-cure does not exceed the depreciation to the remainder if a cure were not taken.

Because of the effects of local ordinance, State statutes or Federal regulations (e.g., compliance with the ***Americans with Disabilities Act***), a cost-to-cure may be required even if the cost of the cure actually exceeds the depreciation that is otherwise payable if the cure was not accomplished.

It is important that the cost-to-cure estimates include the direct costs of the cure. In addition, whenever appropriate, the estimates should include all indirect costs (e.g., the effects of delay) and a reasonable entrepreneurial profit factor. If a consultant is used to assist in estimating a cost-to-cure amount in a partial acquisition, the appraiser must review and analyze that cost estimate and identify this assistance in the report.

3-2.26.2 Cost-to-Cure on Improvements within the Acquisition

In situations where an improvement is within the proposed acquisition area, it may be economically beneficial for the State to relocate or replace the improvement as a cost-to-cure item rather than acquire it. Improvements such as corrals, wells, sewage facilities and fences may be critical to the use of the property, and because the economic justification of replacing or relocating these types of improvements would be obvious, determining depreciation to the remainder property may not be required. The appraiser should demonstrate with a brief analysis that the contribution value of the improvements exceeds the cost-to-cure.

3-2.26.3 Contractor/Engineering Estimates for Cost-to-Cure Work

Contractor and engineering estimates are used to obtain a cost estimate to replace or reproduce items such as structures, improvements, irrigation facilities, septic systems and specialty fencing. The appraiser is to examine the contractor or engineering estimates needed for all of the parcels on an entire project and to preplan the most effective and efficient means of obtaining the desired information.

Written estimates are required when the value of items in each estimate exceeds \$1,500. The appraiser will prepare a Contractor's Estimate (Form RWA-146) for each parcel. It is the appraiser's responsibility to prepare measurements, sketches and photos that would help the individual providing the estimate. Wherever practical, the individual providing the estimate should sign or initial Form RWA-146. A copy of the estimate is to be included in the appraisal report. When an estimator elects to use their own format for generating the estimate, it is the responsibility of the appraiser to ensure that sufficient detail is obtained for a reader/user to understand the estimate.

For items with an estimated cost value exceeding \$50,000, a minimum of 2 written contractor or engineering estimates are required unless they are waived in writing by the Appraisal Supervisor or review appraiser.

When the value of the items included in an estimate is less than \$1,500, the estimate may be referenced, preferably on Form RWA-146, to a verbal quote that specifies the

vendor or estimator along with their telephone number and address. Or, the appraiser may develop the estimate by referencing a cost schedule or cost publication (e.g., Marshall & Swift).

If the appraiser uses an estimate from 1 parcel or from a price schedule provided by an estimator for multiple parcels, the appraiser should note this source in the remarks and attach a copy of the information in the addenda.

3-2.26.4 Timeframe

The contractor's estimate must reflect the period of time for which the estimate is valid. Whenever practical, the appraiser should obtain estimates that will be good for an effective period of 180 days. Note any limitations placed on the length of time the estimate is valid in the remarks.

3-2.26.5 Estimate in Ranges

Although using estimates that provide a range of values is discouraged, it is recognized that some estimates for large improvements (e.g., buildings) may need to be expressed as a range of values due to the complexity of the structure, the volatility of the material costs or the lack of construction plans. It is the appraiser's responsibility to identify and support the use of a specific value.

3-2.26.6 Risk and Incentive

Generally, bona fide bids for completing work will have risk and incentive already built into them, and there is no need for the appraiser to include additional risk or incentive payments. However, the landowner may be entitled to an administration and oversight fee to compensate for the time and work needed to hire a contractor and oversee the work. It would not be unreasonable to add a 5% administration and oversight fee to the cost-to-cure bid. Sometimes, the complexity of the cost-to-cure work would warrant paying more than 5%. If this is the case, the appraiser must provide a reasonable rationale for the additional risk and incentive payment.

3-2.26.7 Use of Local Contractors and/or Engineers

Appraisers are required to use local contractors and/or engineers who are familiar with working in the area of the subject property to ensure that estimates contain

considerations for local requirements and to reduce the need for non-local estimators to build in larger than normal risk and incentive charges because of the uncertainties of working in an unfamiliar area. If it is necessary to use a contractor and/or engineer from another area, the appraiser must obtain approval from the District Right-of-Way Supervisor or the Appraisal Supervisor prior to obtaining the estimate.

3-2.26.8 Payment for Contractor or Engineering Estimates

The Department pays the market rate for securing contractor estimates. If estimates for multiple parcels are needed, the appraiser should seek the rate application that is most beneficial to the Department.

Appraisers have the discretion to spend up to \$150 per estimate without prior approval. When the cost of obtaining an estimate exceeds \$150, staff appraisers must obtain approval of the District Right-of-Way Supervisor and fee appraisers will obtain approval from the Appraisal Supervisor or review appraiser prior to committing to the services being provided. District Right-of-Way Supervisors and review appraisers may approve contractor and engineering estimates that cost up to \$500 to produce. The Appraisal Supervisor must approve any contractor or engineering estimate that exceeds \$500 to produce.

The Department is to be billed for services rendered. The billing must be separate from the estimate and must have the following:

- an original bill (NOT a fax or photo copy);
- the uniform project number and designation;
- the parcel number(s);
- the payee's name, address and social security or tax ID number; and
- the signature of the payee or the payee's duly authorized representative.

Billing that is not made separately from the estimate is to be returned for compliance.

3-2.26.9 Cost Manual or Schedule Referencing

When a cost manual or cost schedule is used to establish a value, the appraiser should identify the manual used, the effective date of the manual and the classification applied. To aid a reader/user of the report, the appraiser also should include references to the section and page number of the base value and any modifiers or multipliers applied to the calculation.

3-2.27 Uneconomic Remnants

If a small or isolated tract of land is left after the right-of-way acquisition, it may be considered an uneconomic remnant if it lacks utility to the landowner.

The ***Dictionary of Real Estate Appraisal*** defines a remnant as “a remainder that has negligible economic utility or value due to its size, shape or other detrimental characteristics.” **MCA 70-31-301(9)** states, “If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant shall be made.”

The appraiser should estimate the after value of the remnant and should make a recommendation on whether the remnant should be purchased. However, all determinations of uneconomic remnants are to be made by the review appraiser based on utility, market considerations and indications made by the property owner.

If the property owner notes that any or all of the remainder would be of no value or utility to the owner, the appraiser should indicate this in the appraisal history. If practical, the property owner should express their concerns in writing and the appraiser should include these concerns in the appraisal report. The owner's concerns should clearly express whether or not any part or all of the remainder would be of value to the owner.

3-2.28 Request for Salvage Values for Disposal of Property

Each salvageable improvement to be acquired on a right-of-way parcel must have a salvage value. The negotiator will give the grantor the opportunity to retain improvements for the amount of the established salvage value, provided the Department determines that it will allow the grantor to retain the improvements. The negotiator will establish a salvage value of 10% of the appraised value if the value of the improvement is \$10,000 or less. If the value of the improvement is greater than \$10,000, the appraiser will complete and attach a Salvage Appraisal Request Form (Form RWL 96A) to the appraisal.

The Real Estate Services Section will:

1. Receive a Salvage Appraisal Request Form (Form RWL 96A) from either the Appraisal Section or the appraiser if the value is greater than \$10,000. The District Right-of-Way Supervisor will advise, by memorandum, if the determination of value is less than \$10,000 and not subject to formal review.

2. An inventory of all fixtures acquired with the improvements should be listed on the Salvage Appraisal Request Form, if used. The list of fixtures will be coordinated and agreed on by the reviewer and appraiser. The property manager in the Real Estate Services Section will review the parcel appraisal for improvement information, check the salvage sales guides for comparable salvage sales to establish the salvage value and, if necessary, discuss the improvements to be acquired with the appraiser.
3. The property manager in the Real Estate Services Section will establish the salvage value for each improvement valued greater than \$10,000. The property manager will submit the appraisal to the Real Estate Services Section Supervisor or the Appraisal Section Supervisor for review and approval.
4. The original copy of the Salvage Appraisal will be placed in the parcel file and 1 copy will be returned to the District Right-of-Way Section Supervisor.

3-2.29 Salvage Values for Use in Appraisals

When the appraiser needs a salvage value for improvements, fixtures and equipment for inclusion in the appraisal, the appraiser will develop the salvage value estimates based on market information. The estimates may be based on actual sale information or information that was obtained from individuals who typically buy and sell similar items in the market. Include sufficient data to identify the source of information and details of the sale or estimate. Obtain a written estimate of value from individuals making estimates for the appraiser. The Contractor Estimate Form (RWA-146) may be used for obtaining a salvage estimate, but it should clearly indicate that the estimate is to establish a value in place for removal from the site.

Salvage value estimates established by the Real Estate Services Section are not considered acceptable for inclusion in an appraisal valuation.

3-2.30 Fencing

Fencing is recognized as an integral part of the use and enjoyment of property. Department policy is to replace existing fencing with fencing of similar kind or utility. Fencing that has holes, breaks or gaps, or is in a condition that it has little or no contribution value to the subject property, may or may not be replaced at the Department's discretion. The appraiser should note the condition of the fence and consider any effect on the property's value.

The appraiser should be familiar with the Department's Fencing Policy (see the ***MDT Road Design Manual***) and should have full knowledge of the design plans for fencing the project. Identify any fencing affected by the project acquisition in the appraisal report and appropriately referenced with stationing. If the Department can construct the replacement fencing during construction, the appraiser should state that in the appraisal.

If the Department cannot construct the fencing, the appraiser must obtain a contractor's estimate to construct new fence and/or relocate the current fence and compensate for the less expensive option. Sketches of the before and after situations are to be included when the cumulative value exceeds \$1,000 to illustrate what is happening with the site and the cost-to-cure. Replacement of any fence should consider any salvage from the existing fence.

Where specialty fencing exists, and the appraiser believes the contributory value of the fence to be substantially less than replacement in kind, the appraiser, with adequate explanation, may provide compensation based on the contributory value of the fence acquired.

3-2.31 Use of the Metric System

In the recap section of the appraisal report, both U.S. Customary and metric units must be shown for the land included in the acquisition and construction permits. The Department has a ***Metric Conversion Manual*** to assist in the proper application of metric measurements.

3-2.32 Rounding of Value Estimates

Value estimates should not reflect a precision that is unattainable in real estate appraisal. Estimates should be rounded up to the nearest dollar and should occur at the end of a series of calculations indicating contribution value. Round the final conclusion of value upward to the nearest \$50.

3-2.32.1 Multiple Parcels in a Single Appraisal Report

Generally, each parcel should be appraised individually on a separate appraisal form. However, the appraiser may elect to use 1 appraisal report to combine multiple parcels that meet the unity of ownership and unity of use tests for a larger parcel. In this case,

only 1 rounding will occur to the nearest \$50 after the summation of all of the components.

3-2.32.2 Lessor/Lessee Interest

Allocation to each interest (lessor/lessee) should be to the nearest dollar, and rounding the total compensation of each interest should be upward to the nearest \$50. For example, total compensation is \$12,400 where the lessor's interest is \$10,115 and the lessee's interest is \$2,225. Round the lessor's interest to \$10,150 and lessee's interest to \$2,250.

3-2.33 Sketches

Provide sketches to aid the reader/user's understanding of the appraisal. The amount of detail included in the sketch would be dependent on the complexity of the parcel and/or the appraisal problem. All sketches in or attached to any appraisal report will have North arrows. In addition, include an indication of scale to which the sketch is drawn. If the drawing is not to scale, it should state so.

For right-of-way acquisitions, site sketches are to be provided that show the acquisition area and the location of any affected aboveground or subsurface improvements. Right-of-way plans may suffice for this purpose, or they may be modified for this application.

Where the appraisal is of an improved site, a site plan sketch showing the relationship between any and all improvements and the lay of the land is desirable. Also include sketches of improvements for improvements affected by the acquisition. When the improvement is a major structure on the site, interior details, including a floor plan, are helpful.

3-2.34 Maps

Typically, maps are placed in appraisal reports to help the reader/user understand the appraisal problem, locate comparable sales and locate the subject property within the given market area. The appraiser should take the time to provide quality exhibits with adequate detail but without irrelevant material. All maps must contain the North direction arrow.

Include overview maps to show a reader/user how the comparable sales relate to the subject parcel and project. They should be of sufficient detail to provide the reader/user with geographic references as well as specific locations.

Attach plat maps to each comparable sale form that provide sufficient detail of the ownership boundaries of the land.

3-2.35 Plotting of Subject Areas

If the need arises where the appraiser must have areas plotted and calculated, an exhibit should be produced and included in the appraisal report. Where practical, areas should be calculated to 3 decimal points and the calculated area should be indicated within the appropriate portion of the exhibit. See ***MDT Right-of-Way Design Manual*** for metric conversion instructions. The appraiser should indicate who prepared the exhibit, and there should be consideration for appropriate assumptions and limiting conditions. The Right-of-Way Design/Plans Section may be of assistance in securing an appropriate plot and calculations.

3-2.36 Photographs

Photographs are to be attached to all copies of sales catalogs, project reports, comparable sale forms and appraisals. Good photos contribute significantly in aiding the reader/user to see what the appraiser saw as to the property attributes and acquisition consequences. For each photo, the date, the photographer, the scene and particular components are to be identified or described. Any other pertinent data should be added. When a particular item is to be brought to the attention of the reader/user, mark the photo in a way so that there is no question as to what is being shown.

Digital photographs may be used provided they haven't been enhanced, altered or modified in any way that misleads the reader/user. The appraiser's certification may indicate this.

3-2.36.1 Subject Photos

At least 1 photo of the acquisition area is mandatory for all right-of-way appraisal reports. Additional photos may be taken and added to the report at the discretion of the appraiser. Wherever practical, the right-of-way limits should be marked on the photo(s).

The appraisal report must include exterior and interior photos of all structural improvements to be acquired or that will suffer depreciation resulting from a right-of-way acquisition. Individual photographs should be taken of all major property improvements that affect the value or use of the property. This is especially important for narrative appraisal reports for condemnation.

For condemnation appraisal assignments, there are times that a property owner will not allow the appraiser access to the property in order to inspect the property and improvements. If this occurs the appraiser should contact Legal Services for help in accessing the property.

3-2.36.2 Comparable Sale Photos

Where there are improvements associated with a comparable sale, at least 1 photo with sufficient detail to provide a reader/user an impression of condition is required for each major improvement. All improvement photos should be in addition to photos of the land associated with the sale.

3-2.36.3 Use of Representative Photos

At times, road or weather conditions, a lack of sufficient location information or some other factor may prevent the appraiser from positively identifying the comparable sale or reaching the exact location of the sale. In these cases, a “representative” photo may be taken. The use of a representative photo will be accepted only if the following conditions are met:

1. Sufficient information is contained on the sale confirmation form so that a reader/user can locate the same location from which the photo was taken. The appraiser must describe how to find the location using directions with sufficient detail to find the location easily. This may include the appraiser attaching a map to the location showing distances and landmarks.
2. The reason for using a representative photo is explained on the sale confirmation form.
3. An explanation is included as to why the appraiser believes that the photo would be representative of the comparable sale.

The use of representative photos is prohibited in an appraisal for a condemnation case.

3-2.37 Appraisal History

The appraiser is to include a log or diary of the appraiser's activities pertinent to making the appraisal. This history must include names, telephone numbers and addresses of anyone who provided information used in the appraisal process, as well as all dates of inspection of the subject property. The history is to be completed on the approved Form RWA-130 and included in the appraisal addenda.

3-2.38 Transferring Documents

Unless the sale is referred to in a sales catalog or project report, copies of transferring documents for all comparable sales must be included in the Appraisal Section and master file copies of the appraisal report. Also attach the most recent transfer document for the subject property to the appraisal report.

3-2.39 Date of Last Inspection/Effective Date

The last date of inspection of the property is to be the effective date of the appraisal unless directed otherwise. The appraisal report and the appraisal history should have corresponding dates for the inspection of the property.

3-2.40 Certification of Appraiser

Each appraisal report is to have a "Certification of Appraiser" in accordance with Section 3-5.7 and/or Section 3-5.8. Complete and date the certification as the last step in the appraisal report process. The date of the certification should be the date of the report. If, for any reason, the report is updated or changed, a new certification is required.

3-2.41 Condemnation Appraisal Assignments

When a parcel is submitted for condemnation, all appraisal activities will be coordinated between the Appraisal Supervisor and Legal Services. The appraiser should prepare a report similar to one that would be prepared for negotiation purposes. After the report has been approved and the appraiser has been selected to serve as a witness, the appraiser will be assigned to perform any additional work required to prepare for testimony. Appraisal instructions, the date summons was served, and the approximate date of hearing or trial will be furnished to the appraiser. Upon request by the attorney handling the case, the Appraisal Supervisor, review appraiser, attorney and appraiser will meet for a pre-hearing or pre-trial conference. On appraisal issues, legal questions

should be addressed through the Appraisal Supervisor, who may consult with Legal Services.

All appraisal reports for eminent domain proceedings must be approved by a review appraiser or the Appraisal Supervisor prior to being used by Legal Services.

3-2.41.1 Recommendation of Witnesses

Appraisal and other expert witnesses may be recommended by the Appraisal Supervisor subject to approval of Legal Services. Final determination of any witnesses to be used at each Commissioners' Hearing or at any subsequent trial rests with the attorney handling the case. Some of the factors that should be considered in making these selections are the:

- experience of each individual as a witness in court,
- reputation and probable recognition that will be given in the community to the ability and judgment of each individual,
- consultation with the appraiser as to possible changes in market conditions that would affect the original estimate,
- time required to furnish a new or revised report, and/or
- availability of the appraiser to testify.

When the Bureau's request for eminent domain proceedings is approved by Legal Services, update each appraisal to the date when the summons was served.

3-2.41.2 Revised or New Appraisals for Condemnation Proceedings

If additional appraisals are deemed necessary for condemnation proceedings, as typically determined by Legal Services, their need should be based on 1 or more of the conditions listed below, and the Bureau's file should reflect which condition(s) support the need for the additional appraisal(s):

- when the original appraiser, though competent as an appraiser, would make an ineffective witness;
- when special-purpose properties or uniquely complex valuation questions are involved and another appraiser is deemed better qualified or experienced to appraise and testify;

- when the nature of the case (e.g., extremely valuable property) reflects that additional testimony may be a tactical advantage;
- when it is deemed expedient to have additional testimony from a local appraiser;
- when properties involved in condemnation proceedings are either severed or consolidated for trial purposes, thus making the original appraisals inappropriate or improper;
- when the original appraiser(s) may not be available at the time needed; and/or
- when a conflict of interest exists or occurs that disqualifies the original appraiser.

The objective is to produce an appraisal report that leads the user to the same logical estimate of value determined by the appraiser.

3-2.41.3 Hindsight Rule

The Dictionary of Real Estate Appraisal defines the Hindsight Rule as:

A rule that permits the admission of evidence relating to events subsequent to the date of taking to prove or disprove the validity of any claim of value.

In Montana, the date of taking is the date the summons is served.

Typically, sales subsequent to the date of taking should not be submitted as evidence, or considered by the appraiser, for the following reasons:

1. The use of these sales gives the appraiser information that would not have been available to the hypothetical purchaser on the date of summons; therefore, the appraiser would be considering market factors unknown as of the date of summons.
2. Subsequent sales may reflect project enhancements, which the appraiser must disregard in estimating the value of the property at the time of summons.

Sales after the date of taking usually are inadmissible. However, in Montana, the appraiser may use these sales if appropriate adjustments are made and if the sales meet the usual standards of comparability and are not otherwise incompetent as evidence of value.

In preparation of an appraisal report for court, the appraiser should always consider the Hindsight Rule. The admission of these sales, if adjusted, generally is permitted in Montana; however, the appraiser should have available alternative sales to which the appraiser can testify if sales subsequent to the date of summons are ruled inadmissible. Subsequent sales, after the date of summons, are necessary for cross-examination of the landowner's appraiser.

Before the Hindsight Rule can be applied in an appraisal report for litigation, the appraiser will obtain written approval from the Appraisal Supervisor or Legal Services.

3-3 GENERAL PROCEDURES

3-3.1 Advanced Acquisitions

The Department may determine that it is in the public interest to acquire property in advance of regular project scheduling or before detailed design plans are completed. Advanced acquisition may be used:

- to protect the availability of properties that have a high probability of development (Federal-aid Participating)
- when a property owner requests an advanced acquisition because delay imposes a hardship on the owner (Federal-aid Participating)
- when the property becomes available on the open market (Non-federal-aid Participating)
- when the public interest is best served by the Department proceeding with an advanced acquisition (Non-federal-aid Participating)

Note: The Department may eventually be reimbursed even on the Non-federal-aid Participating examples above once the project is authorized by FHWA.

Normal appraisal procedures apply in advanced acquisition situations. However, these properties typically cannot proceed to condemnation because the Department would be unable to prove necessity without suitable design plans. It is Department policy to seek property owner agreement before initiation of an advanced acquisition. If amicable settlement cannot be reached, the Department will not file condemnation action prior to regular project scheduling.

3-3.2 Crop Allotments, Conservation Reserve Programs (CRP) and Various Federal Permits

An appraiser must be cautious when doing an assignment involving various Federal land programs. Crop allotment and various Federal land use permits granted to the farmer or rancher do not necessarily attach to the land. For example:

- Crop allotments may be transferred to other land, sold or leased.
- Federal grazing permits issued under the ***Taylor Grazing Act*** are revocable and create no property rights.

- U.S. Forest Service permits issued under 15 **USC** 580(L) are revocable and create no property rights.

If the appraiser is not knowledgeable or experienced in appraising property under these programs, the appraiser should consult with the Appraisal Supervisor for advice.

3-3.3 Gas, Oil and/or Mineral Rights

Gas, oil and mineral rights normally are not acquired for highway right-of-way purposes and no responsibility rests on the State to determine if these have been reserved or conveyed by previous property owners. Where these rights must be acquired to support the roadway prism, special instructions should be sought from the Appraisal Supervisor and Legal Services. Gas, oil and mineral rights usually are acquired when the Department is acquiring land for maintenance or other non-right-of-way purposes. The appraiser must show clearly in the report whether these rights are to be acquired or reserved to the owner. If comparable properties show a difference in value for properties with and without these rights, an adjustment should be generated to establish the value of the property with or without the rights.

3-3.4 Gravel and Sand

Sand and gravel are not recognized under Montana law as minerals. However, a separate reservation for the development of a pit for the extraction of sand and gravel may exist, in which case the appraiser should not appraise the pit as a separate element but should consider its contribution value to the whole.

Appraise property that contains sand and gravel deposits with consideration only to the extent that the presence of sand and gravel would enhance the current fair market value of the property as a whole. This also applies to incidental sand and gravel pits for the owner's use.

3-3.5 Hazardous Waste and Contaminated Property

The appraiser must review the project environmental document to determine if any problem materials or sites have been identified in the study. Also, any site suspected of containing hazardous waste, underground storage tanks, or contamination or any site on which it was discovered on a property during the appraisal process is to be reported immediately to the Department's Environmental Services, with a copy to the Appraisal Supervisor. If hazardous material, an underground storage tank or a contaminated site is identified and cannot be avoided, a detailed and comprehensive investigation will be ordered from Environmental Services to further delineate the magnitude of contamination and potential risks associated with the site. The investigative report will

detail the magnitude and clean-up strategies and provide cost estimates for the clean-up and mitigation. The property will be appraised with the estimated cost of the clean-up included in the appraisal report.

If test results and clean-up costs are not available at the time of the appraisal, the Appraisal Supervisor may instruct that the property be appraised as if it were clean, and any associated assumptions are to be stated expressly in the appraisal report. The appraiser must recognize that the site is or may be contaminated and should attempt to discover if there is any stigma that must be addressed through the valuation process. Appraisal reports of properties where test results and clean-up costs are unknown also should contain a statement that the opinion of value is subject to change if or when contamination or hazardous wastes is identified and an appropriate report is generated to address clean-up and mitigation.

3-3.6 Historical Sites and Improvements

Historical sites or improvements are those that are either listed on or eligible for listing on the ***Historical Register***. Historical sites and improvements should be acknowledged in the environmental document. Typically, historical sites and improvements are avoided by the Department if at all practical. If a historical site or improvement is to be acquired, it must be appraised under current fair market value criteria. The appraiser must address any commitments made in the environmental document regarding modifications or preservation issues and any costs associated with those commitments. Historical improvements may include buildings, bridges, outbuildings, fences, retaining walls, fountains and other appurtenances.

Vegetative improvements on a historical site might be considered historical in nature. However, because the historical significance usually is vested in a structure, the vegetative improvements are to be treated in the same manner as vegetative improvements on non-historical sites. No increase in value is to be applied for the “historical” nature of an improvement unless it can be demonstrated in the marketplace.

The appraiser should contact the Appraisal Supervisor for further instructions and guidance, if necessary. The appraiser should also contact the MDT Environmental Services to check for any agreements MDT may have with the State Historic Preservation Office (SHPO).

3-3.7 Privately Owned Canals or Waterlines

3-3.7.1 Canals or Waterlines Crossing the Right-of-Way

Any privately owned canal or waterline that crosses the existing or proposed right-of-way will be perpetuated and constructed at State expense. Any land required outside of the right-of-way acquisition area for relocation of the waterline or canal will be addressed in the appraisal report.

3-3.7.2 Canals or Waterlines That Do Not Cross the Right-of-Way

If a privately owned waterline or canal that is within but not crossing the proposed right-of-way is planned to be relocated outside the new right-of-way line, then the owner will be compensated for the relocation work performed or the depreciation caused if relocation does not occur. The appraiser should determine the most economical solution for the Department (i.e., the cost to relocate the canal vs. the value of the improvement to be taken plus depreciation, if any, to the remaining property). In some cases, the responsibility of relocating waterlines and canals may vary from this policy. The appraiser should then obtain advice from the District Right-of-Way Supervisor, the Appraisal Supervisor and/or the Design Manager.

3-3.8 Irrigation Companies

The Department must pay compensation for impacts to irrigation companies as prescribed by **MCA** 60-4-109, Irrigable Lands Rendered Unusable—Unpaid Construction Costs, which provides:

1. *Whenever the Department acquires irrigable land for highway purposes or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.*
2. *The Department shall also pay a lump-sum amount to the district sufficient to produce, on an amortized basis for a reasonable period not to exceed 90 years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the Department and not overcome by bringing new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for*

the 5 years, or so many years as the district has assessment experience if less than 5 years, preceding the date of acquisition.

When irrigable lands are to be acquired or rendered unusable, the appraiser will obtain the following information:

- information about the irrigation district including how it currently operates;
- if there is any unpaid construction lien or other encumbrance on the land to be acquired;
- the number of hectares (acres) under irrigation and subject to operation and maintenance charges;
- a tabulation of the operation and maintenance charges per hectare (acre) over the past 5 years;
- the number of hectares (acres) of irrigated land within the new right-of-way limits;
- the number of hectares (acres) outside of the new right-of-way limits that have been deprived of water or rendered non-irrigable as a result of the acquisition and highway construction;
- the additional yearly operating costs that would be anticipated for items including travel of the ditch rider, canal cleaning and maintenance; and
- the number of hectares (acres) of potential irrigable ground that are not currently under irrigation without expansion of the present system.

Once gathered, the information is to be forwarded to the Appraisal Supervisor. The Appraisal Supervisor, or designee, will compute the compensation to be offered each irrigation district and transmit the indicated compensation by memorandum to the Acquisition Manager for negotiation. Use a discount rate of 10% to calculate the lump-sum payment unless the gathered information indicates that a different rate should be used.

3-3.9 Irrigated Properties

3-3.9.1 Irrigated Lands

Land may be irrigated by sprinkler system or pipes or through a surface network of ditches and/or pipes. The source of water may be from a well, ditch, spring or pond located on the property, or the water may be purchased from a source outside the

property. Often, the value of irrigation facilities (e.g., well, pump, pipe) may be included in the value of the land. Unless it is not practical to obtain water, land that is not irrigated, but is irrigable, should be considered to have a higher and better use than ordinary dry land.

3-3.9.2 Irrigation Equipment

The appraiser should evaluate comparable sales to identify any irrigation equipment that might have been included in the sale. The appraiser should have an indication of the equipment included in the sale and an idea of its contribution value to the sale price. Only by knowing what was included can the appraiser do an accurate job in evaluating the sale and conveying to the reader/user the implications on value.

The appraiser should make every effort to determine the actual value that the irrigation equipment contributes to the sales price. The buyer's or seller's indication of contributory value should be tempered by what the market-indicated contribution value would be. For example, an appraiser finds a sale of 80 acres for \$96,000. The buyer indicates that the irrigation equipment contributed \$6,000 to the sale. Similar sales indicate that flood-irrigated land sells for \$1,000 per acre. The apparent contribution value of the irrigation equipment is \$16,000 (\$96,000–\$80,000).

Compensation for depreciation to the remainder can include the impact on remaining irrigation equipment. The acquisition of irrigated land and irrigation facilities, say, a pump or main supply line, may result in the remaining equipment being super-adequate for the remaining irrigation requirements. Superadequacy is compensable as depreciation. Depreciation also may be established by the difference between the contribution value and the salvage value of the equipment if it is sold off of the site.

3-3.10 Improved Properties with No Acquisition

MCA 7-14-4202 requires compensation for damages accruing to improved properties as a result of raising or lowering the grade of an abutting street or sidewalk in a city or town. In *State versus Keneally*, 142 Mont. 256, 384 P.2d 770 (1963), this law was extended to improved properties outside city/town limits. These damages must be substantiated by market data showing depreciation to the fair market value of the improved property.

Changing the access to properties also may cause compensable depreciation if the remaining access is deemed to be unreasonable. If any condition is identified, the appraiser should bring it to the attention of the Appraisal Supervisor. The Appraisal

Supervisor will have the responsibility for determining if an appraisal will be required and, when appropriate, will request parcelization from the Right-of-Way Design/Plans Section.

3-3.11 Railroad Properties

Railroad properties are divided into 2 general categories:

1. Operating Right-of-Way. Land occupied by the railroad for its operating track locations and/or support facilities for the operation of the railroad.
2. Non-Operating Right-of-Way. All other railroad-owned property.

These categories also can be divided into land that is classified as follows:

1. Charter Lands. Lands usually granted to a company to build a railroad subject to the charter agreement between the company and the U.S. Government. These lands may be the original location of a primary track that may no longer be in use. Often, the railroad company cannot divest itself of this property except for Federal-aid highway purposes.
2. Non-Charter Lands. Lands not subject to the original charter agreement between the company and the U.S. Government. These lands are disposable by the railroad company.

The Department has established a policy of appraising operating railroad right-of-way based on adjacent land values i.e. “across the fence values”. For non-operating, non-charter lands owned by a railroad, the appraisal of the subject parcel will follow the same policies and procedures as any other property appraised for right-of-way acquisition.

Generally, the Department acquires operating railroad right-of-way property by easement only. To be able to identify the property interests being acquired and those that will remain with the railroad company, the appraiser should obtain a copy of the easement to be used or a similar easement. Department policy is to value all easements on railroad property at 70% of fee value using “across the fence values”. If the appraiser feels that a value other than 70% is appropriate, the appraiser will need to support the alternative value.

Occasionally, MDT is only able to obtain a “license agreement” from the railroad because of the proximity of the acquisition to the railroad’s centerline. Because a license does not convey an interest in the property, only the right to occupy, Department policy is to pay 49% of fee value, which is based on 70% of the easement value using “across the fence values”. If the appraiser feels that a value other than 49% is appropriate, the appraiser will need to support the alternative value.

Compensation for construction permits on railroad properties will be based on 10% of fee value using “across the fence values” for a term of two years unless reasoning for a longer term is provided (See 3-2.25.3).

3-3.12 Specialty Appraisals

3-3.12.1 Purpose

Specialty appraisals are not to be confused with contractor or engineering estimates. Specialty appraisals are estimates of value of expensive equipment, fixtures or mechanical apparatus. These appraisals are done by individuals who specialize in the appraisal of this type of item and they usually supplement the overall appraisal of a subject property.

If the appraiser feels that there is a need for a specialty appraisal, it should be brought to the attention of the Appraisal Supervisor. Specialty appraisers are contracted and assigned by the Appraisal Supervisor and may be subject to the same qualifications, specifications, policies and procedures applicable to fee appraisers.

3-3.12.2 Format

The Department requires that all specialty appraisals contain, as a minimum, those elements considered applicable to a properly written real estate appraisal report. These elements should include, but are not limited to, the following:

- proper identification of the parcel and project;
- a statement setting forth the purpose of the appraisal, the value to be estimated and the rights or interests being appraised;
- identification, description and ownership of the specialty items;
- a statement of appropriate contingent and limiting conditions;
- photos of all principle specialty items or unusual features affecting value;
- the estimate of compensation for, or which results from, the acquisition of the specialty item(s) (In the case of a partial acquisition, the estimate of the value of the whole of all specialty items and an allocation of the compensation for the portion in the acquisition, and an allocation for depreciation to current fair market value, if any, of the remaining specialty items.);
- the data and analysis or reference to same, to explain substitution and thereby document the estimate of compensation;
- the effective date(s) for which the estimate of compensation applies;

- a certification, including a dated signature;
- attachments in the addenda including, but not limited to, descriptive material, charts, plans and photographs; and
- an appropriate history of the appraisal, including all dates of contact with the owner or the owner's representative, relevant comments and the last date of inspection.

3-3.13 State, Federal and Tribal Land Appraisals

3-3.13.1 State-Owned Lands

Acceptable appraisal practice will be applied on all appraisals dealing with the acquisition of State lands. Properties under the control of other State agencies generally are acquired by easement. Because easements acquired for highway purposes usually are perpetual in nature, the value often is nearly equal to fee value. However, it is the responsibility of the appraiser to evaluate any remainder rights and the actual impact of the acquisition.

When acquisitions affect State-owned timbered lands administered by the Montana Department of Natural Resources and Conservation (DNRC), the appraiser should ask the Appraisal Supervisor to obtain a timber inventory and appraisal. The estimated timber value is to be separated from the overall land value that was established by the use of comparable sales of timbered tracts. In no case will the total exceed the current fair market value of the whole; also see Section 3-3.15.

3-3.13.2 Navigable & Non-Navigable Streams

The DNRC has jurisdiction over portions of rivers within the State that it has determined navigable.

A list of these streams can be found at:

<http://www.dnrc.state.mt.us/trust/navigablerivers.htm>.

The DNRC has authority to administer ownership from but not limited to:

- **Equal Footing Doctrine (1844)**
- **MCA 70-16-201 Owner of land bounded by water.**
Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

- **MCA 70-1-202 Property of the State – what is included.**

The state is the owner of:

1.) all land below the water of a navigable lake or stream.

For the purpose of appraisal, department policy is to obtain an easement from DNRC for these lands. The following method will be used to value the easement:

Total easement area (low-water mark to low-water mark)
 X unit value of the land adjoining the navigable stream
 X 50% (DNRC/MDT Policy)
 = Compensation

Unless otherwise noted, the area shown on the plans is the area between the low-water marks. Also, based on the highest and best use, quadrant land values may or may not be the same.

MDT minimum payment policy applies (see 3-2.14).

The following example is for demonstration purposes.

Quadrants 1 & 2

\$1,000 per acre

Quadrants 3 & 4

\$2,000 per acre

Parcel 1 administered by DNRC and valued at:

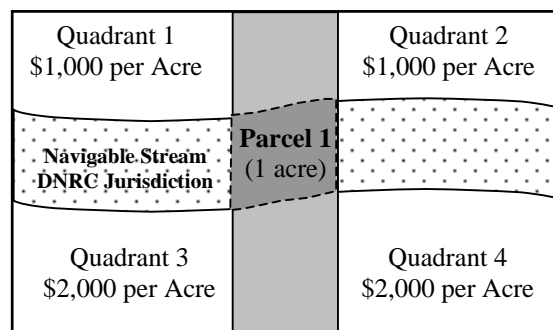
1 acre easement area

X \$1,500 (Average value of Quadrants 1, 2, 3 & 4)

X 50% (DNRC/MDT Policy)

= \$750

Example



Bridge Project

Non-Navigable Streams on State Land

See 3-3.13.1 State-Owned Lands

Non Navigable Stream on Private Land

Department policy is to pay full fee value. If the landowner requests that the department purchase the right of way with an easement, see 3-2.24.1 Purchasing Easements.

Incorporate applicable assumptions and limiting conditions in the appraisal report.

3-3.13.3 Federal Lands

Federal lands are acquired directly from a Federal agency by application through the FHWA. Generally, no appraisals are required for lands managed by the U.S. Forest Service or the Bureau of Land Management (BLM). Properties managed by the U.S. Park Service and the U.S. Fish and Wildlife Service usually are appraised.

If an appraisal is required, follow acceptable appraisal practice unless otherwise instructed by the Appraisal Supervisor. The appraisal report is to be complete, with copies of all supporting documentation attached to each individual report. In addition to any other copies of the report required to meet the appraisal assignment, prepare a copy of the appraisal report for submission to the Federal agency that has management authority over the property.

3-3.13.4 Native American Tribal and Trust Lands

Contact the Bureau of Indian Affairs (BIA) for approval to use the “Determination of Value” format on a project involving tribal lands and lands held in trust for Native Americans. If approval is denied, appraise these lands using the appropriate appraisal format. Prepare an additional copy of the valuation report for submission to the local tribal authorities. For all types of valuation formats, attach copies of all supporting documentation to the tribal copy. The valuation report is to include the tribal allotment numbers as part of the identification of the parcel.

Native American Tribal and Trust Lands generally are acquired by easement. This type of acquisition might result in a severed remainder having little or no utility to the property owner. The appraiser should identify potential uneconomic remainders and address any depreciation to the remainder.

3-3.14 Subdivisions

Value estimates must not be made based solely on the fact that a legal subdivision exists, a plat has been filed, a plat has been drawn or a potential exists for subdivision. Valuation must consider other factors that affect value. Fundamental to the appraisal of subdivisions and potential subdivisions are the concepts of “highest and best use” and “supply and demand.”

Highest and best use must be examined as of the date of appraisal, not on a speculative interpretation of what may happen at some unknown time in the future. The appraiser must not lose sight of the fact that if the subject could be subdivided in a market, then other parcels can be subdivided also. The cumulative effect of other potentially subdivided parcels along with the subject property must be considered in the highest and best use analysis. In addition, the larger parcel concept must not be ignored if a potential subdivision would have a detrimental effect on the remainder parcel.

Proposed subdivisions or subdivisions plotted on paper are speculative and should not be considered fact. The appraiser must recognize the impact on value that the proposed

subdivision would have on a potential buyer for the property as of the date of appraisal, not as if it were already developed.

3-3.14.1 Potential Subdivision

Property having subdivision potential may not be subdivided arbitrarily by the appraiser. Rather, treat it as a tract of land available for subdivision development. If the subject property has been subdivided on paper, but no improvements have been made to the land, the land value must be supported with similar vacant land comparable sales. If there is an absence of market data, a subdivision residual approach may be used.

The appraiser may be requested to value a property as if subdivided, less the costs associated with developing the subdivision. This is a technical evaluation of the costs to develop the property, the estimated sales of the resulting lots and the associated costs and benefits.

In this approach, the appraiser has to determine the number of lots in the subdivision by considering what has been proposed, what the market will accept and what is allowed by regulation. The appraiser also must examine the potential market demand for the proposed lots and their absorption rate. This requires studying the market for similar finished lots and examining the effects of the market on them, including, but not limited to:

- list price versus actual sales price,
- time on the market,
- financing,
- discounting for the sale of multiple lots, and
- any other considerations that might be identified in the market.

The appraiser also must examine the costs associated with developing a subdivision. Subdivision development costs include all hard costs (e.g., engineering fees, surveying, road construction, curbs, gutters, sumps, sewer system, water system, grading) as well as all soft costs (e.g., permits, taxes, sales costs, overhead, interest, profit).

Along with any additional costs over the sales period, the appraiser should schedule the development costs over the development period. Through a study of market data, the appraiser will have to determine an appropriate discount rate for the timeframe involved. The costs and income streams will have to be discounted back to the indicated present worth of the property.

3-3.14.2 Subdivided Property

Where land has been physically subdivided by the construction of streets, and utilities have been provided, or if there have been bona fide sales to the public of individual lots, it is acceptable to appraise the land as a subdivided property. However, not all subdivisions meet current design criteria or have market demand. Sales also may indicate that discounting should be considered to allow for purchases of multiple tracts to form a larger parcel with greater utility. The appraiser also must consider wholesale prices to a builder or speculator, market absorption rate, holding costs, etc.

3-3.15 Timbered Lands

As with the appraisal of other properties, the highest and best use of timbered land usually determines the market value. However, timbered lands may have multiple uses that can include timber production, grazing, mining, recreation and residential home sites. The appraiser should investigate the influence of timber at the beginning of the appraisal process by examining the motivations of sellers/buyers and other information from the market.

For tracts of land that are dedicated to the production of timber, consideration of the timber value and vacant land value may be appropriate. In these cases, a timber inventory should be obtained and a market-based estimate of the vacant land should be established.

Tracts that are encumbered by deed restrictions, conservation easements or a covenant or condition against the removal of commercial timber should not be appraised as timbered land.

3-3.15.1 Timber Inventory and Valuation Requirements

If an inventory of timber is warranted, provide the following information:

- project number;
- project designation;
- parcel number;
- total number of stems;
- number of stems by species;
- average diameter at breast height (DBH);
- average DBH by species;
- minimum specifications considered;

- method of estimating volume (e.g., volume table used);
- estimate of volume by species;
- any specialty products that should be considered; and
- copies of tally sheets.

When reporting value estimates, include the following additional information in the inventory report:

- the date of value basis,
- an indication of whether the value is based on mixed species and mixed grades, and
- a specific species or if grade related.

If the value estimate is based on delivered log values to a certain location, include the following in the appraisal report:

- identification of the location,
- the delivered log value indicated,
- an estimate of logging and hauling costs,
- identification of the source, and
- the stumpage value indicated.

If the value estimate is based on sales of timber, include the following in the appraisal report:

- the location of all sales,
- the name of the purchaser, and
- the parties to the sales.

3-3.15.2 Timber on Highway Easements

The ownership of timber that is located on a highway easement remains with the owner of the fee unless the easement specifically provides otherwise or the timber has been severed by means of a timber deed.

It is the responsibility of the appraiser to ensure that the value of commercial timber is identified in any easement situation. If some timber is to remain, isolate the value of the remaining timber from the timber to be acquired. Consideration for construction activities, particularly construction-related ditching, sloping and utility relocation, should be taken into account when deciding the disposition of the timber and the allocation of values. The compensation for all rights acquired should not exceed the value of the whole property as if it was purchased in fee.

3-3.16 Trees, Shrubs and Other Vegetative Site Improvements

Consider the existence of trees, shrubs and other foliage on acquired land as a factor in determining value. The preferred method to establish the value of trees, shrubs and other foliage is to determine the contribution value to the larger parcel.

The appraiser may obtain estimates from various sources for the replacement cost of trees, shrubs and foliage. However, do not use the direct application of cost figures without consideration of the contribution value of this type of item to the whole property. If a cost estimate is used for trees and shrubs, the appraiser will use values for trees and shrubs up to the largest specimens that are available readily and normally.

If a cost estimate is used for grass, the appraiser will use a sod-only value in the areas of acquisition and a laid-sod value in construction permit areas. Give consideration to the quality of the subject's sod. A lawn with low-quality sod, bare areas, poor coverage, dead spots or some other adverse factor would not have the same contribution value as a healthy weed-free lawn.

If a cost estimate is provided for beds of bulbs, spreading plants, rhizomes or any similar perennial plants or flowerbeds, the appraiser is to use a flat value not to exceed \$250 unless the appraiser's rationale can support a higher value. An exception to this would be a bona fide agricultural operation that has stock that would be considered under this heading. For beds of annual plants, no compensation generally would be made.

3-3.17 Water Rights

Water rights usually are not acquired for highway right-of-way purposes. However, these rights might be required when the Department acquires land for other purposes (e.g., maintenance sites, wetlands). The appraiser must clearly show in the report whether these rights are to be acquired or reserved to the owner.

If market data show a difference in value for properties with and without water rights, an adjustment should be generated and used to establish a value of the subject property either with or without the rights.

Where water rights are to be acquired by the Department, the appraiser should work closely with the Appraisal Supervisor. Acquiring these severed rights is complex and requires legal advice.

An appraiser's blanket assumption or limiting condition that water rights are not appraised may not always be sufficient. If a comparable sale includes water rights, then the appraiser must consider this in the appraisal and make the appropriate adjustments.

3-3.18 Water Sources

The typical water sources encountered in right-of-way appraisal are irrigation wells, stock wells, domestic wells, artesian wells and springs.

If any of these types of water sources are impacted by right-of-way acquisition, give consideration to its contribution value to the whole property and the potential for replacement, recognizing risk or additional costs. The evaluation of the water source in the before situation should consider not only the amount of water produced, but also the amount required so that any other improvements can be addressed in the appraisal.

3-3.18.1 Irrigation and Stock Wells

Consider irrigation wells and their appurtenances as a part of the land and not as separate improvements; also see Section 3-3.9.

The appraiser must consider the irrigation well and its contribution value to the existing site whether its usage is agricultural, residential or otherwise. When an irrigation well site is affected by a project, the impacts of removing the well should be closely examined by the appraiser. If the depreciation in value to the remainder is less than the cost of re-establishing a well, the depreciation should be paid. Taking of water sources, no matter

what they might be, is always contentious. If the appraiser concludes that a well should not be re-established and that depreciation to the remainder should be paid, the appraiser should examine the effect on the economic unit. If changing the highest and best use of the land affects the economic viability of the larger parcel and therefore its market value, then a cost-to-cure to reinstall the well facility may be required.

Likewise, consider stock wells and their appurtenances as a part of the land value and not as separate improvements. In partial acquisitions, the part acquired should be appraised as stock land with watering facilities available; however, these facilities should not be considered as separate items or improvements.

3-3.18.2 Domestic Wells

A domestic well usually supplies potable water. If it is determined that the replacement of a well may be less costly than the depreciation to the remainder, the Department may proceed in one of the following ways to perpetuate water:

1. The Department may provide compensation to the landowner for the estimated cost to re-establish a well.
2. The Department may attempt to provide the replacement when the landowner is uncomfortable with the inherent risk of establishing a new well or when the development of a new well is difficult to predict.

If the Department is to provide the replacement well, the fee appraiser should contact the Appraisal Supervisor for further instructions. The staff appraiser should make arrangements with the owner for the work to be performed as soon as practical, preferably prior to completion of the appraisal. The location of the new well should be determined by agreement between the property owner and the appraiser, using the expert knowledge of well drillers, sanitarians or other water specialists.

Prior to drilling a new well, the well being replaced is to be tested for quality and quantity of the water supply. Generally, the quantity may be determined from test logs provided by the driller or property owner. This is particularly important in areas where obtaining water is a known problem.

When the State participates in an unsuccessful attempt to replace a well, when feasible and when in the best interest of the State, the existing water well may be retained as a water source and left in place. The agent should notify the Appraisal Supervisor of any unsuccessful attempt to drill a new well. The Appraisal Supervisor will inform the

appraiser of the problems encountered in replacing the well and provide suitable instructions to the appraiser on how to proceed.

3-3.18.3 Springs and Artesian Wells

Water sources from springs located within the acquisition area or that may be impacted by construction may be difficult or impossible to maintain after highway construction. Construction action like blasting, cuts or fills may affect the performance or capacity of a spring. If the appraiser discovers that there is a spring water source, the appraiser should involve the Department's engineers, geologists and/or hydrologists. The appraiser should see what types of considerations were made for perpetuating or dealing with the spring water source.

If the appraiser does not feel certain that the water availability will remain generally the same after highway construction, the appraiser should consider the market impact of not having the spring water source on the site. If depreciation can be identified and cannot be offset by an alternative water source (e.g., a well), include the amount of depreciation in the determination of compensation.

Wherever a spring water source is impacted, the appraisal should include a narrative discussion of the water potential, a determination of available water rights, a listing of persons contacted for advice and the reasons for any conclusion drawn. Include supporting documentation in the addenda of the appraisal report.

3-3.19 Access Control and Limited Access Control

3-3.19.1 Obtaining Access

Access to the State highway system may be fully controlled with ingress and egress only permitted at approved interchanges or control may be limited to at-grade accesses allowed at Department-approved locations. Access rights may be acquired by deed, or access control may be exercised through the police powers of the State, in which case, no rights are acquired and no compensation is due.

If a proposed highway project leaves a landowner without reasonable access to an abutting property, the owner is entitled to compensation for whatever depreciation in value is suffered by reason of the loss of reasonable access. This depreciation should be measured by the market value of the property before the acquisition as compared with the market value of the same property after the acquisition. It is the appraiser's

responsibility to appraise the property for potential depreciation in value to the remainder as a result of access control.

During the appraisal process, it may become apparent that an adjustment in the location of an approach may mitigate depreciation to the remainder. In this event, the appraiser will contact the Appraisal Supervisor for instruction. A request for an adjustment during the appraisal process should be used only to mitigate proven depreciation. Additional approaches should not be requested unless the designed approach locations do not offer reasonable access.

Abutting property owners have no legal right of access to a highway that is constructed in a new location. In this situation access control is affected through the access control resolution approved by the Transportation Commission only. No compensation would be paid for imposing access control. Appropriate compensation would be paid for land and improvements acquired and for other legally compensable damages.

3-3.19.2 Valuation for Sale of Access Control

When an abutting property owner requests an access to a highway facility that the Montana Transportation Commission has designated as a controlled access highway, the Department and the Montana Transportation Commission must grant approval prior to the access being granted and the approach being installed.

If the Department determines that safe access can be provided, the landowner will be required to purchase this access from the Department if access control was purchased from the landowner at the time access control was imposed (unless a written waiver for unusual circumstances is granted). In this case, the appraiser must determine the increase in value to the abutting property as a result of the additional access.

The appraiser first must attempt to establish the value of the access control by identifying the difference in market value between comparable sales with and without similar access. With all other factors being equal, any resulting difference will represent the contribution value of the access. The resulting difference may be applied to the subject as a percentage factor or as a dollar amount per unit of measure. The appraisal is similar to a before and after appraisal of the subject property.

If the Department determines that safe access can be provided, and access control was imposed using the State's police powers, no compensation was due at the time of acquisition. Therefore, the landowner is not required to purchase the access from the Department.

Other compensation may be due to the Department for mitigation of the impact the additional access has on the highway in either case.

3-3.20 Single Agent Valuations and Acquisitions

When compensation for an uncomplicated acquisition of fee interest, easement or temporary interest in land or improvements totals less than \$10,000, the agent/appraiser may be assigned to establish value and negotiate the desired interest. Valuation is to be through use of the Determination of Value procedure that does not require the making of an appraisal. The Department's policy and procedures pertaining to these types of acquisitions are provided in Section 4-3.3 of the ***MDT Right-of-Way Operations Manual***.

3-3.21 Scope of Work

The Appraisal Supervisor or review appraiser should provide a scope of work for all appraisal assignments. This scope of work may provide known information as it relates to the appraisal assignment. The scope also may provide some direction to the appraiser assigned to the appraisal assignment (e.g., number and type of reports to be provided).

3-3.22 Waiver of Appraisal

The Waiver of Appraisal is addressed in Section 4-3.3 of the ***MDT Right-of-Way Operations Manual***. A determination of value is not an appraisal nor is it reviewed by the Appraisal Section as one.

3-3.23 Valuation of Off-Premise Sign Sites

Sign sites are valued using the term of the lease, the lease rate and a discounting rate. The sign industry, in most cases, has advised the Department that sign site leases for off-premise signs generally are negotiated on a 3- to 5-year term with a renewal option. The sign industry also indicates that it takes 30 to 36 months to realize the actual sign cost from monthly payments by the advertiser. After the original cost is recaptured, the remaining term of the lease, less site costs, is the profit. There is 15% to 20% of the sign value attributed to maintenance (e.g., repainting, repairing superstructure, checking for vandalism).

3-3.23.1 Written Lease

If a site owner has a signed lease with a sign owner, and the lease agreement is economic rent, the remaining years of the lease can be considered with 1 renewal term. For instance, a site owner may have 2 years remaining on a contracted lease and another 3-year renewal option. The site owner would be entitled to a payment of 5 years multiplied by a present worth factor using a 10% discount rate. This is further explained in the following examples:

1. Example #1. The site owner has a signed lease with a sign owner for \$250.00 per year with 5 years remaining on the lease. The present worth per annum factor for 5 years at 10% is 3.791. Therefore, the site owner would be entitled to \$947.75 (3.791 times \$250.00).
2. Example #2. A sign owner has a signed lease with a site owner at \$350.00 per year for 5 years with the option to renew the lease for 5 additional years. One year and 2 months have passed, leaving 3 years and 10 months remaining on the written lease, and a 5-year option to renew. Because less than half of a year has elapsed into the second year of the written lease, a full year will be allowed for the second year. This, then, leaves 4 years of the remaining written lease plus a 5-year renewal term, for a total of 9 years. The present worth per annum factor for 9 years at 10% is 5.759. The payment for the sign site would be \$2,015.65 (\$350.00 times 5.759).

In Example #2, it is assumed that payments are not made on the first of the year. If this were the case, the present worth factor would be calculated for 8 years. In both examples, it is assumed that the sign is legally occupying the sign site.

In no event should the total of the remaining written lease, plus 1 renewal term, exceed 10 years. If in the field it is found that the remaining economic life of the sign is in excess of 10 years, and the renewal terms on the written sign site lease are in excess of 10 years, forward this information to Helena Headquarters for review and FHWA approval prior to any further action.

3-3.23.2 Verbal Lease

If only a verbal lease exists between a sign owner and site owner, the lease has a year-to-year term. When there is only a verbal lease, the term used to calculate the value of the sign site should not exceed 3 years. Compute the value of the sign site using a discount rate of 10%.

3-3.23.3 Advanced Payment

In rare cases, it may be found that the sign owner has paid the site owner in advance the amount agreed on by a written lease. In this instance, the remaining years of the site lease, as recited in the written lease, will be paid to the sign owner without applying the discount process. For example, a sign owner agreed with a site owner on a payment of \$2,000 in advance. The lease was written for 5 years. This amounts to \$400 per year. Assuming 2 years remaining on the original site rental at the time of acquisition, the sign owner would be entitled to \$800, the full rental for the 2 years remaining on the lease. If this same lease had an option recited for renewal of a 5-year term, compensation for the renewal option would be paid to the site owner by applying the present worth of 1 per-annum factor, deferring the first and subsequent payments, 2 years.

3-3.23.4 Leasehold Interest

There may be rare instances in which the sign owner has a leasehold interest in the land. Generally, leasehold value should be considered and computed on an individual basis. Contract rent of the site should be compared to economic rent of similar sites, using comparables that reflect typical rental value. The difference between contract rent and economic rent is the rental advantage. The present worth of the rental advantage for the duration of the remaining income stream is the discounted compensation due the sign owner or lessee.

3-3.23.5 Determination of the Discount Rate

It is Department policy to use a discount rate of 10% when estimating the present worth payment for all sign site leases, because this rate is typical of sign site rental rates.

3-3.23.6 Minimum Payment

In all cases in which sign site compensation is less than \$300 per parcel, a minimum payment of \$300 per parcel is eligible under Federal participation. The \$300 covers all sign site payments and covers any nuisance claim for a sign site interest.

3-3.23.7 Documentation

A written site valuation will be supported by a copy of the sign site lease attached to the appropriate form, or the written lease will be reviewed by the appraiser for factual data and legality. An oral lease will be confirmed by the site owner or the sign owner.

Include all computations of site value on the Site Data and Evaluation Form (Form RWA-170). Once this form is completed, submit it in triplicate to the assigned review appraiser. After completing the review, the review appraiser will submit the original of the approved RWA-170 directly to the Helena office. Submit 2 copies to the Manager of the District Right-of-Way Unit for the Manager's use in negotiation of the sign site.

3-3.24 Carveout Value for Replacement Housing Payment

The Appraisal Section may be requested to provide a "carveout" value for purposes of assisting the MDT Relocation Agent in the determination of the maximum replacement housing payment. Section 5-5.2.2.1 of the ***MDT Right-of-Way Operations Manual*** provides additional guidance for this effort.

3-3.25 Cellular Towers

Cellular towers located in the acquisition area are not utility items that are relocated by the Department's Utility Section. This is due to the fact that these communication towers are not subject to the same FCC requirements as are other utilities. Cellular towers will be an appraisal item that will require the appraiser to consider the cost to acquire the improvement against the cost to relocate the facility onto adjacent property, if allowable, physically practical, and/or acceptable to the utility company. This process is similar to the appraisal of advertising signs and sign sites discussed in Section 3-3.23.

3-3.26 Appraisal of Remnants and/or Small Tracts

Properties not necessary to the Department's needs are appraised prior to being offered for sale if their value exceeds the \$10,000 established value adopted in ***MCA*** 60-4-203. The Real Estate Services Section will establish valuation guidelines for parcels that fall below the \$10,000 threshold value.

Where a small tract of excess land to be sold by the Department is to be appraised, the appraiser should consider the following:

Oftentimes, the highest and best use of a small tract is “assemblage” to an adjacent parcel. Therefore, if market research demonstrates that there are no reliable comparable sales of similar property, the appraiser will have to treat the property as if it is part of the adjoining tract to which it would be assembled. The appraiser then would appraise the larger parcel as if the small tract were already a portion of the tract and identify the small tract’s contribution value to the whole. The contribution value would become the appraised value of the subject property.

When there is a choice of more than 1 parcel to assemble a small tract to, highest and best use would indicate that the tract that would have the greatest return to the land would be the tract selected. However, selection should not be made only on this basis. The appraiser also should consider what would be logical, reasonable and likely. The appraiser should consider demand or potential demand not only for the subject parcel, but also for the combined parcel.

3-4 APPRAISAL FORMATS

3-4.1 Types

The following data/appraisal formats are currently in use by District and Bureau personnel:

1. Data and Project Information Formats.

- Sales Catalog
- Project Report

2. Appraisal Formats.

- Summary Appraisal Report for Non-Right-of-Way Property (RWA-152)
- Summary Appraisal Report for Right-of-Way Acquisitions (RWA-155)
- Modified Before and After Narrative Report

The Uniform Residential Appraisal Report (URAR) format is not currently used by District and/or Bureau personnel; however, fee appraisers are allowed to use this form when appraising residential properties involving total acquisitions and/or disposal appraisals. Fee appraisers must comply with USPAP requirements when using this format, except to the extent that USPAP's Jurisdictional Exception Rule is invoked in order to meet MDT appraisal requirements.

A project appraisal assignment may include the use of 1 or more of the formats. A non-project related appraisal assignment typically is completed only using 1 format.

3-4.2 Sales Catalog

3-4.2.1 Procedure

The sales catalog, or catalog of sales, provides sales data to be used by appraisers. As a general rule, sales catalogs will be used when:

- no valuation analysis is to be completed as part of the sales catalog,
- the information is to be applied to differing classifications and property types in separate reports,
- directed by the Appraisal Supervisor,

- the assignment presumes that the use of a collection of sales data is appropriate, and
- the appraisals do not lend themselves to a common value conclusion.

The sales catalog is assigned as a compilation of sales only. The analysis of the individual sales (e.g., breakdowns, development of adjustments) or value conclusions is to be included in the individual appraisal reports.

The use of a sales catalog by reference makes it a part of the appraisal report. Therefore, proper verification and presentation of the sales data compiled in the report will help ensure a supported, acceptable appraisal.

The sales catalog should include, but not limited to, the following information:

- cover sheet showing date of the report, right-of-way project number, right-of-way identification number, right-of-way designation, a reference that it was produced for use with the Bureau Right-of-Way appraisal report and name and signature of the appraiser;
- scope of investigation including general area data, type(s) of properties and general sources of data (e.g., court records, real estate personnel contacted, local appraisers);
- sales map(s) showing the location of the sales in relation to the project or appraised property(s) covered by the report and/or their general location in relation to other major reference points;
- individual sales reporting forms and associated exhibit material (e.g., location maps, transferring documents, photos);
- sales grid with comparison information (e.g., sales price, sale date, terms of sale, size, zoning, physical characteristics, unit value or other items of comparison); and
- any other data or information that may be relevant (e.g., assumptions and limiting conditions that relate to all of the parcels).

Unless otherwise instructed in the assignment, the appraiser should prepare 1 original (master file copy) and 3 copies of the sales catalog. One copy should be retained in the District for its records.

Prior to completion of the assignment, the appraiser should reexamine the market for any additional transactions that have taken place and that might affect values. If any

sales are located, they should be verified and a supplement should be prepared for addition to the sales catalog. Any appraisals affected by the new information should be revised prior to being submitted. Appraisals that have already been submitted should be updated with the new information.

Note that sales catalogs are not to be used with narrative appraisal reports.

3-4.2.2 Sales Catalog Supplement

In the event that it becomes necessary to update values of numerous parcels due to a change in market conditions, a supplement to the sales catalog is to be completed. The supplement becomes a part of the original report and therefore the numbering of the new sales must continue the sequence started in the original report.

3-4.3 Project Report

3-4.3.1 Procedures and Format

A project report provides the Bureau with sales data, analysis of the sales data, data to support adjustments to the sales for comparison purposes and common value conclusions for land classifications and/or land types. It is prepared by the appraiser when multiple appraisal reports use the same comparable sales and when otherwise redundant information may be contained in a single report to be referenced.

The project report should be presented in a logical fashion and, so far as practical, should follow the accepted sequence of presentation associated with narrative appraisal reports. The use of this format, by reference, makes it a part of the appraisal report. An acceptable project report complies with the guidelines in this Section and with accepted appraisal practice. Because the project report contains conclusions to value and is a part of the appraisal report by reference, forward it to the Bureau's Appraisal Section for review, preferably prior to completion of associated appraisal reports.

The Project Report includes, but is not limited to, the following information:

- cover sheet showing date of the report, right-of-way project number, right-of-way identification number, right-of-way designation, Federal-aid number where applicable, a reference that it was produced for use with the Bureau's Right-of-Way summary appraisal report and name and signature of the appraiser;
- letter of transmittal, listing the information included in the project report;

- the assumptions and limiting conditions that relate to all of the parcels covered by the report. (Note: Include those assumptions and limiting conditions that relate to specific parcels or groups of parcels in the individual appraisal report.);
- any general descriptive information that applies to the project or to the parcels, as long as it is not specific in relationship to individual parcels;
- sales map(s) showing the location of the sales in relation to the project or appraised property(s) covered by the report and/or their general location in relation to other major reference points (e.g., cities, towns, major landmarks);
- descriptive narration of the sales providing all pertinent information (These descriptions may be grouped with all of the pertinent sales of a classification or type.);
- sales grid with comparison information (e.g., sales price, sale date, terms of sale, size, zoning, physical characteristics, unit value or other elements of comparison);
- all analysis, development of adjustments and sales and value indications leading to the value conclusions. (The appraiser should indicate which sales provided the most weight in the value conclusion and explain why.);
- individual sales reporting forms and associated exhibits (e.g., location maps, transferring documents, photos) in the addenda; and
- any other data or information relevant to the project (e.g., a copy of soils maps and descriptions).

Unless otherwise instructed, the appraiser should prepare 1 original (master file copy) and 3 copies of the project report. One copy should be retained in the District for its records.

Prior to completion of the assignment, the appraiser should reexamine the market for any additional transactions that have taken place and that might affect value. If any sales are located, they should be verified and a supplement should be prepared for addition to the project report. The additional sales are analyzed in the same manner as the original sales, and if found necessary, the originally reported values are to be adjusted to reflect the new data. The appraiser is only required to include a sufficient number of sales to support the findings.

If sufficient data for a particular classification or type of land is not found, a conclusion to value should not be included in the project report. The appraiser should include those

sales applicable to the classification or type and a reference that the sales analysis and value conclusion will be contained in the individual appraisal reports.

Note that this format is not to be used with narrative appraisal reports.

3-4.3.2 Project Report Supplement

In the event that it becomes necessary to update values of numerous parcels due to a change in market conditions, a supplement to the project report is to be assigned. The supplement becomes a part of the project report and therefore the numbering of the new sales follows the sequence started in the project report. For example, if sales 1 through 32 are in the project report, then the supplement would start with sale number 33. The analysis of the additional sales and conclusions to value are subject to the guidelines of this Section and accepted appraisal practice.

3-4.4 Summary Appraisal Report for Non-Right-of-Way Property

Form RWA-152 is used to appraise excess land, maintenance sites, stockpile sites, non-right-of-way properties or other total acquisitions. Form RWA-152 is a flexible format that allows the appraiser to incorporate information in a manner that it provides the reader/user of the report the greatest opportunity to understand the valuation process and findings in the report. Being a guide with which to report the development of the appraisal, the form is broad in its outline, fully expandable, and purposefully does not specifically reference the many peculiarities found in any individual property.

It is the appraiser's responsibility to include all pertinent information to ensure the report is meaningful. As with all form formats, the report is a summary of information, but sufficient detail is to be included to enable the reader/user to verify fully the information and to understand its effects on the value conclusion. Because the form is a guide and is flexible and expandable, the argument "*it's not called for on the form*" is not valid when explaining the level of detail to be included.

The level of detailed explanation is reduced in this appraisal format, but the appraiser must still incorporate all of the data, support and analysis required for an acceptable appraisal. The appraiser should not sacrifice details that would otherwise make the report reliable simply to make the report shorter. The key to using this format is to be concise.

For very simple appraised properties, brief descriptions usually will suffice. For more complex properties, additional information usually is required to provide an adequate

description of the property, analysis of the sales data and how it compares to the appraised property, and rationale for the appraiser's value conclusion. Include all information used to arrive at the value conclusion in the appraisal report.

3-4.5 Summary Appraisal Report for Right-of-Way Acquisitions

Form RWA-155 is a flexible format that allows the appraiser to incorporate information in a manner that provides the reader/user of the report the greatest opportunity to understand the valuation process and findings in the report. As with all form formats, the report is a summary of information, but sufficient detail is to be included to enable the reader/user to verify fully the information and to understand its effect on the value conclusion. If the appraiser is unable to include information deemed necessary, the use of addendum or exhibits is an appropriate option.

For very simple appraised properties, concise descriptions included in the format will suffice. For more complex properties, include additional information in the body of the report to describe fully the larger parcel, acquisition area, effect of the acquisition, etc. Because the form is a guide and is flexible and expandable, the argument "*it's not called for on the form*" is not valid when explaining the level of detail to be included.

The level of detailed explanation is reduced in this appraisal format to expedite the appraisal process, but the appraiser must still incorporate all of the data and analysis necessary to produce a supported, acceptable appraisal. The appraiser is not to sacrifice details that would otherwise make the report reliable simply to make the report shorter.

The acquisition usually will be a strip taking of land from a larger parcel. If the acquisition is of minimal impact to the remainder parcel, use of this format is acceptable as long as the appraiser indicates that the value of the whole property cannot be established by simple mathematical expansion.

Depreciation and/or diminution in value of the remainder may be addressed using Form RWA-155 if the diminution in value of the remainder is readily identifiable and uncomplicated. Substitute a narrative report for this format if the depreciation to current fair market value is extensive or if extensive explanation and support are required to estimate the reduction in value. Consultation with the review appraiser is recommended to determine the format to be used and to determine development of the appraisal process.

Costs-to-cure that are minor, readily identifiable and logically explained do not require support "from the market," and therefore the appraiser need not complete the "after"

portion of this report format. The appraiser should explain in detail why the cost-to-cure would be allowed, identifying not only the cost-to-cure work to be completed, but also the anticipated effect on the remainder if the cure is not completed.

All data/information used to arrive at the value conclusion is to be included in the appraisal report and/or the sales catalog or project report, when applicable.

3-4.6 Modified Before and After Method

3-4.6.1 Purpose

In Montana and for the Department, compensation for the acquisition area cannot be offset by special benefits; however, damages can be offset by special benefits. Montana, and the Department, follow the modified before and after method in establishing just compensation for acquisitions. The Before and After appraisal used is referred to as “modified” because the procedural steps in determining compensation do not allow compensation for the acquisition to be offset by special benefits. Actually, the modified before and after format is summarized in Form RWA-155. Whether in form or narrative format, the modified before and after procedure for estimating compensation is the basis for all right-of-way appraisals completed for the Bureau.

The narrative format is used for complex appraisal situations and/or complicated parcels when the effects of the right-of-way acquisition cannot be easily explained, whenever the appraisal is being prepared for a condemnation case and/or as assigned by the Appraisal Supervisor.

A before and after appraisal report is actually 2 separate reports. In theory, each report should be able to stand alone, but in practice, much of the information contained in the before portion of the report also may be used in the after part of the report. What is critical is that those items necessary to the support of the differences between the 2 reports be addressed convincingly.

Narrative appraisals prepared for use by the Department are to be complete appraisals and self-contained reports with the information contained in the report described and supported in detail. All information and data used to develop and support an opinion of value is to be included in the appraisal report.

Quality, presentation and analysis of the included data are most important. Most of the effort expended in completing the appraisal report should be directed toward those items that are important to developing the value estimate, rather than to boilerplate.

All pages from the Table of Contents to the Addenda should be numbered.

3-4.6.2 Modified Before and After Narrative Format

Figure 3-4A is an outline of data presentation to be considered in the self-contained report. Variation in presentation is allowed, and the inclusion of additional pertinent information is encouraged. The appraiser is responsible for developing this format to the fullest detail, and it is suggested that narrative information contained in various texts also be consulted.

3-4.7 Appraisal Report Update

This format is designed to allow for simple revisions and/or updating of an original appraisal report and is only to be updated by the appraiser who completed the original appraisal unless approved by the Appraisal Supervisor. It is considered with the original report and is not intended to be a standalone document.

If changes are complicated or extensive, they should be made a part of the original report, or a new appraisal should be completed. This format only requires sufficient detail to allow a reader/user to understand fully the issues being addressed and preferably contains at least the same level of support as in the original appraisal report.

Generally, appraisals that are 6 to 12 months old will require updating. A new appraisal may be required if extensive changes have occurred in the marketplace that would influence market value and/or significant changes have been made to the appraised property since the date of the original appraisal.

COVER / TITLE PAGE:

Provide project information including project number, project ID, right-of-way designation, parcel number, date of the report, identity of the appraiser (name and address), type of appraisal and type of report.

LETTER OF TRANSMITTAL:

Generally accepted practice is to place a letter of transmittal at the beginning of the appraisal report, but the letter may also be submitted with the report as a separate item.

See the current edition of ***The Appraisal of Real Estate*** for typical content.

TABLE OF CONTENTS:

The table of contents is provided to inform a reader/user of the contents within the appraisal report and its location. The minimum development of a table of contents should include the major headings within the report and the associated pages where they are located.

Information contained in addenda must be listed on the table of contents as found in the addenda by category and should be treated the same as the body of the report.

APPRAISER'S CERTIFICATION:

The certification is to be in compliance with the standard certification (Form RWA-120) in use by the Right-of-Way Bureau.

ASSUMPTIONS AND LIMITING CONDITIONS:

Specify the assumptions and limiting conditions that pertain to the appraised property. The use of common assumptions and limiting conditions, including those of the Department, are discouraged without consideration by the appraiser for their applicability to the appraised property. Assumptions and limiting conditions should apply to the appraiser and/or the appraised property and any which do not apply should be removed or modified.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS:

Summarize the key information found in the appraisal report in an outline form, similar to the following:

Effective Date
Purpose of Appraisal
Rights Appraised
Location
Zoning
Improvement(s)
Larger Parcel, Before
Highest and Best Use, Before
Appraised Value, Before
 Cost Approach
 Comparable Sale Approach
 Income Approach
 Reconciled Value, Before
Area in Acquisition
 Value of Land in Acquisition
Structural Improvements in Acquisition
 Value of Structural Improvements in Acquisition
Site Improvements in Acquisition
 Value of Site Improvements in Acquisition
Value of the Acquisition
Value of the Remainder, Before
Larger Parcel, After
Highest and Best Use, After
Appraised Value, After
 Cost Approach
 Comparable Sale Approach
 Income Approach
 Reconciled Value, After
Depreciation to Remainder
Cost to Cure
Cured Value, After
Total Compensation

MODIFIED REPORT

Figure 3-4A
(Continued)

PURPOSE OF THE APPRAISAL:

Indicate the type of appraisal, purpose and intended use of the appraisal.

SCOPE OF THE APPRAISAL:

Describe the investigation, confirmation, analysis and reporting of information that was researched in the appraisal assignment. This would include data regarding the market area, the appraised property and data contained in the approaches to value.

SUMMARY OF APPRAISAL PROBLEMS:

Describe any problems that were identified before and during the appraisal process and detail how they were addressed.

CURRENT FAIR MARKET VALUE:

Define the current fair market value and any other information that would affect the appraiser's consideration of current fair market value. See **MCA 70-30-313** for definition of value.

Include a statement defining the value estimate in terms of cash, terms equivalent to cash or describe in detail and define any other terms.

PROPERTY RIGHTS APPRAISED:

Describe the property rights being appraised. Appropriate assumptions, limiting conditions and explanations need to be made when the rights being appraised are less than fee simple.

IDENTIFICATION OF THE SUBJECT PROPERTY:

The identification of the subject property should include the legal description and street address. The appraisal report should include at least an abbreviated legal description rather than referencing a deed in the addenda.

MODIFIED REPORT**Figure 3-4A**

(Continued)

SALE AND RENTAL HISTORY:

The transaction history for the past 5 years or for 5 years prior to the date of acquisition should detail each conveyance, including identification of parties, conveyance dates, selling prices and rental rates.

MARKET AREA DESCRIPTION:

Include a description of the local market area. Provide information that demonstrates that the appraiser has knowledge of the forces that create and sustain values in the market area and affect the value of the subject property. This may include descriptions of:

- the local economy and factors influencing it;
- the market area, and
- services and factors common to the market area which might affect value or help a reader/user understand local influences.

SITE DESCRIPTION:

Provide information that describes the site, including, if relevant, location, access, topography, flood plain, soils, land use, vegetative cover, water and zoning.

Include sufficient photos to allow a reader/user to develop an understanding of the site in the before and after conditions. All photos should be adequately described using narrative.

IMPROVEMENT DESCRIPTION, BEFORE:

Describe improvements in detail. Photos may be included in the report in this paragraph or in the addenda if appropriate, or both. Include a description of the photographs.

FIXTURES AND PERSONAL PROPERTY:

Identify any fixtures and personal property that are considered to be part of the real estate for the subject property.

MODIFIED REPORT**Figure 3-4A**

(Continued)

ASSESSMENT AND TAXATION:

Assessment and taxation information is provided in the following format:

Owner and Owner's address as shown on tax rolls:

Geo code(s):

Assessed Value:

Land Improvements:

Taxes/Liens:

HIGHEST AND BEST USE, BEFORE:

Provide narrative analysis and conclusion of highest and best use of the larger parcel.

COST APPROACH, BEFORE:

This approach is comprised of 2 parts, the land valuation and an estimate of replacement/reproduction cost new less accrued depreciation, indicating a value of the subject property. The conclusion to value should clearly show the summation of these 2 parts.

Identify support information (e.g., cost calculations and/or cost estimates) in the report. Include copies of written cost estimates in the addenda.

SALES COMPARISON APPROACH, BEFORE:

This approach is based on the comparison of sold properties to the appraised property and develops an overall property value for land and/or a property value for improved properties. Data on property sales is included and analyzed for direct comparison and/or for the development of adjustments to the comparable sales.

The indicated value range developed by adjusting the sales to the appraised property is analyzed. The analysis and conclusion to value is reported as a single indication of value.

MODIFIED REPORT**Figure 3-4A**

(Continued)

INCOME APPROACH, BEFORE:

Include data on the development of the subject's economic rent from the rent survey, improved income property sales used in the development of capitalization rates and other data relevant to the completion of the approach.

RECONCILIATION OF VALUES, BEFORE:

The approaches utilized in the appraisal are compared for strengths and weaknesses, and a final value conclusion is reached.

SCOPE OF THE PROJECT AND ITS EFFECTS ON THE SUBJECT:

Provide a description of the project and the results anticipated. In the report, describe the specific anticipated impact on the appraised property and any anticipated impact to the remainder parcel.

VALUE OF THE ACQUISITION:

Identify the acquisition area and describe the land and improvements, if any, included. Value land and improvements are included in the acquisition area as they contribute to the value of the whole in the before state.

VALUE OF THE REMAINDER, BEFORE:

The value of the remainder in the before state is the remaining value that is left after the value of the acquisition is subtracted from the value of the whole in the before state (reconciled value from the before state). This is a mathematical calculation, not a value indication.

IDENTIFICATION OF THE SUBJECT PROPERTY, AFTER:

The identification of the remainder property should include the address and the legal description as modified by the acquisition.

MODIFIED REPORT**Figure 3-4A**

(Continued)

SITE DESCRIPTION, AFTER:

Provide narrative description of the remainder that describes the remaining site as impacted by the acquisition. Include information such as access, topography, flood plain, soils, land use, vegetative cover, water and zoning.

IMPROVEMENT DESCRIPTION, AFTER:

Describe any remaining or changed improvements. For improvement that are unchanged, a reference to the appraisal section "Improvement Description, Before" is sufficient.

FIXTURES AND PERSONAL PROPERTY, AFTER:

Identify any remaining fixtures and personal property that are considered to be part of the real estate for the remaining subject property.

HIGHEST AND BEST USE, AFTER:

Provide narrative analysis and conclusion of highest and best use of the remaining parcel.

COST APPROACH, AFTER:

Complete an "after" cost approach for the remainder improvements. Note: this new estimate is to be completed without the application of any cost to cure having been completed.

SALE COMPARISON APPROACH, AFTER:

Complete an "after" sales comparison approach for the remainder property. Note: this value estimate is to be completed without the application of any cost to cure having been completed.

MODIFIED REPORT**Figure 3-4A**

(Continued)

INCOME APPROACH, AFTER:

Complete an “after” income approach for the remainder property. Note: this value estimate is to be completed without the application of any cost to cure having been completed.

RECONCILIATION OF VALUES, AFTER:

Reconcile the values indicated through the approaches to a single indication of remainder value.

DEPRECIATION TO REMAINDER:

Depreciation to remainder value is determined by subtracting the value of the remainder, after (as uncured), from the value of the remainder, before.

COST-TO-CURE:

Cost-to-cure may be applied only to offset depreciation to the remainder. The cost-to-cure is to be added as a separate compensation item.

VALUE OF THE REMAINDER AS CURED:

If a cost-to-cure has been applied, the resulting reduction in the depreciation to the remainder value should be identified, explained and supported. The reduction in depreciation value is added to the remainder value, after.

REMAINING DEPRECIATION IN VALUE:

This is estimated by subtracting from the original depreciation in value any reduction in depreciation in value as the result of the cost-to-cure.

SPECIAL BENEFITS:

If there are any special benefits from the project they may offset depreciation to the remainder. They are to be identified and supported. Provide an explanation as to how they have occurred and their impact on the valuation.

MODIFIED REPORT

Figure 3-4A
(Continued)

RECAP OF COMPENSATION:

Recap-of-compensation information is provided in the following format:

Value of Acquisition:

Land:

Improvements (*Inclusive of site improvements*):

Fixtures (*considered realty*):

Permits:

Easements:

Cost to Cure:

Depreciation to Remainder (*not offset by special benefits*):

Total Value of the Acquisition – Rounded:

Compensation based on plans dated:

Lessee's Interest:

Lessor's Interest:

ADDENDA:

The exhibits in the addenda are included to support the value findings or clarify information contained in the report. Information included should be consistent with that information included in the body of the report.

While the order of placement is up to the appraiser, it is suggested that the order coincide with the format of the written report and the importance of the information provided.

MODIFIED REPORT**Figure 3-4A**

(Continued)

For the subject property, the addenda should include location maps, site plan, floor plan, documents of conveyance, contractor estimates, zoning information, flood plain information, written instructions or legal opinions, specialty reports, rental agreements or leases, trust documents, title reports, photographs and any other pertinent information.

For comparable sales, the addenda should include comparable sales maps, comparable sales forms, site plans, floor plans, documents of conveyance, contractor estimates, zoning information, flood plain information, rental agreements or leases, photographs and any other pertinent information.

MODIFIED REPORT

Figure 3-4A

(Continued)

3-5 APPRAISAL FORMS

3-5.1 Introduction

The following forms are approved for use with appraisal assignments for the Department. The form formats are intended to assist the appraiser in completing the appraisal assignment.

Generally, the forms are organized by the following categories:

<u>Category</u>	<u>Form Numbers</u>
Appraisal Administrative Forms	100–109
Appraisal Sale Confirmation	110–119
Miscellaneous Appraisal Forms	120–149
Valuation Formats	150–159
Appraisal Contract Forms	160–169
Sign Appraisal	170–180

Generally, this Section contains a brief explanation of the form. The actual forms can be found on the Department's website.

All forms are public record and are subject to discovery in the event of condemnation litigation. The content of all forms should at all times be accurate, informative and professional.

3-5.2 Appraisal Contact Letter

The Appraisal Contact Letter (Form RWA-138) is used to schedule appointments for an initial contact of a property owner. This form should be used along with Form RWA-139 when scheduling initial appointments with property owners.

3-5.3 Appraisal History

The Appraisal History (Form RWA-130) provides information for:

- dates the subject and comparable properties were inspected,
- information and concerns as expressed by the property owner,
- a history of meetings with individuals for developing the appraisal, and

- any other information that is important for the development of the appraisal assignment or that may aid an acquisition agent who will later work on the parcel.

The history is not to be used as a diary for day-to-day activities, nor should it include information that should be detailed in the body of the appraisal report or on a reporting form found within the appraisal report.

3-5.4 Appraisal Report Checklist

The Appraisal Report Checklist (Form RWA-147) is designed to help appraisers ensure that the appraisal has all the components needed. This is a standalone document for reference only and is not to be made a part of an appraisal report.

3-5.5 Appraisal Response Letter

The Appraisal Response Letter (Form RWA-139) is used to solicit responses from a landowner to schedule an appointment for an initial contact. This form should be used along with Form RWA-138 when scheduling initial appointments with property owners.

3-5.6 Assumptions and Limiting Conditions

Form RWA-140 may be printed as a standalone document or incorporated into other documents. It is the responsibility of the appraiser to add any additional assumptions or limiting conditions that may be appropriate for an appraisal assignment and to remove any assumptions or limiting conditions that are not appropriate.

3-5.7 Certification of Appraiser

Form RWA-120 is a standardized certification for appraisal reports. Users should read the certification each time before signing it to ensure that all of the statements are true and correct. Signing the certification verifies that the statements are true and that the appraiser has complied with the statements. Certifications may not be backdated.

The Department form appraisal report has the same certification incorporated into it. When changes are made to the report, the certification must be updated accordingly.

3-5.8 Certification of Review Appraiser

Form RWA-121 is a standardized certification for appraisal reports. Review appraisers should read the certification each time before signing it to ensure all of the statements are true and correct. Signing the certification verifies that the statements are true and that the review appraiser has complied with the statements.

A new certification is to be submitted for any changes in the report, and the date of the report must correspond with the fact that changes have been made. Certifications may not be backdated.

3-5.9 MDT Comparable Sale Form

Forms RWA-111 or RWA-111S are standard reporting forms for any property that is used as a comparable sale. Designed as a standalone form, it is to be placed in the addenda of the appraisal report in a sales catalog or project report.

The appraiser is responsible for editing this form for presentation. Adding or deleting spacing in the base form may aid in editing the presentation of the information provided.

3-5.10 Contractor's Estimate

Form RWA-146 has been designed as a stand-alone form that would be placed in the addenda of the applicable appraisal report.

3-5.11 Photo Sheet

Use Form RWA-124 as a mounting sheet for additional photos of either the subject or comparable sales. These forms are designed as standalone sheets to be added to the addenda of the report.

Mount photos individually with information for each photo included in the report.

3-5.12 Residential Data Sheet

For residential appraisals, the Residential Data Sheet (Form RWA-122) is used to help identify characteristics associated with the subject and the comparable sale properties. It may be used as an information sheet or attached as a supplement to an appraisal or

the comparable sales information sheets. The intent of the form is for an easy reference comparison between a subject property and comparable sales.

Most of the appropriate blanks are to be filled by an "X," but there are locations for detailed information as well as additional remarks.

3-5.13 Tabulation of Sales Not Used by Appraiser

During the scope of the appraisal, the appraiser often locates sales that initially appear to be valid sales but are not used in the appraisal report. These sales should be identified in Form RWA-133 so that a reader/user has some idea why each sale was not used in the valuation process.

The form lists some commonly used indications for transferring documents (instruments). If the appraiser finds that a transferring document type is not listed, a code and identification of type may be added to the list.

The form lists some common reasons for not using a sale in a report. All appropriate codes are to be placed under "Remarks." The appraiser is not limited to these remarks and is encouraged to add additional codes or remarks as needed.

3-5.14 Comparable Lease Information

Form RWA-118 provides information on properties that were not direct comparable sales but that provide information used in the development of the Income Approach to Value. Many of the entries are the same as those associated with the Department Comparable Sale Form (Form RWA-111); therefore, that section should be referenced for completing entries when necessary.

A copy of the lease should be obtained and attached to the form. Or, explain any failure to attach the lease.

The appraiser is responsible for editing this form for presentation. Adding or deleting spacing in the base form may aid in editing the presentation of the information provided.

This form can be used for describing rental (i.e., income and expense) information for a single rental or for multiple rentals associated with a single comparable location.

There are entries that are different than those contained on the Department Comparable Sale Form (Form RWA-111).

3-6 APPRAISAL REVIEW

3-6.1 Review

All appraisals used by the Department for Federal-aid acquisition purposes are to be reviewed and approved prior to the commencement of negotiations.

The appraisal review process is that part of the appraisal process that ensures that both the property owner and the taxpayer are treated fairly by having properly prepared appraisal reports with credible valuation estimates. Either staff or fee review personnel may perform the review function, subject to the provisions found in Section 3-1.

The review appraiser must act as a neutral party when evaluating appraisal reports, and the review analysis and findings should reflect this neutrality. The review appraiser is an advocate only for the appropriate implementation of the ***Uniform Act***, State eminent domain law and regulations, and criteria in this Chapter.

Documentation standards for appraisal and appraisal review should be commensurate with the complexity of the appraisal problem. Review appraisers are expected to prepare an appropriate written explanation, supporting the review appraiser's estimate of just compensation.

The review appraiser should consider the following in the review of any appraisal, but the review is not to be limited to these items:

- accepted Department appraisal practices,
- mathematical computations,
- format and completeness based on the appropriate appraisal guidelines contained in this Chapter,
- support and documentation,
- appraisal techniques employed,
- assurance that the appraiser has submitted an estimate of current fair market value as defined by Montana law,
- assurance that all compensable items under existing Montana law are included in the appraisal, and

- assurance that dates relating to valuation, property inspection and certification are included in the appraisal report.

Finally, the review appraiser should determine that the concluded value is the highest price supportable in the market and that the appraisal is made in accordance with the highest professional methods and ethical standards and with constant regard to the rights of the property owner and the citizens of Montana.

3-6.2 Acceptable Appraisals

The review appraiser must be aware of all Department appraisal requirements and address any items in the appraisal reports that fail to meet Department requirements. Appraising is not an exact science. Therefore, there must be flexibility in the decision-making process to allow for differences between the valuation established by an appraiser and that which might have been established by the review appraiser. The review appraiser is not to substitute the reviewer's judgment for that of the appraiser.

The review appraiser is delegated the responsibility for establishing just compensation or the final estimate of value used to initiate negotiations. The review appraiser is responsible for the content of the Determination of Just Compensation (Form RWA-109), as well as for further documentation the review appraiser adds to the report.

The review appraiser must make the determination whether the report is acceptable or not acceptable based on the information contained within the report and accepted Department appraisal practices. This does not mean that the appraisal report must be completed in the manner that the review appraiser would do it, but only that the appraisal and appraisal report must comply with acceptable appraisal practices.

If the review appraiser finds that a report is acceptable, the review appraiser may make any comments deemed appropriate or make no comments at all and simply approve the appraisal report with the appropriate review form (Form RWA-109 or RWA-108).

If the review appraiser finds that an appraisal report is acceptable but disagrees with the conclusion of value, the review appraiser may still accept the value with or without comment when the difference is minor. If minor corrections or additions are needed in the appraisal report, the review appraiser is encouraged to address those changes in the review report, rather than sending the appraisal report back to the appraiser for corrections. In the case of major oversights, omissions or errors, note these and return the appraisal report to the appraiser for correction.

It is the review appraiser's approved estimate of compensation that is the amount that must be offered to the landowner.

3-6.3 Appraisals Returned for Correction

The review appraiser has the authority to return to the appraiser any appraisal that requires adjustments, corrections or additional data or that is not in compliance with this Chapter and acceptable appraisal practice. When an appraisal is returned before a Form RWA-109 is prepared, retain a copy of the appraisal for the Appraisal Section Working File and return all other copies of the appraisal to the appraiser. The appraiser should make necessary corrections to each copy of the appraisal report and resubmit the copies along with replacement pages for the copy retained by the review appraiser; also see Section 3-4.6.

If major revisions are required, submit a revised appraisal report or new appraisal for the Appraisal Section Working File. Any support information (photos or information in the addenda) contained in the original report that is still valid does not have to be resubmitted with a revised or new report.

The appraiser and review appraiser are to work in concert to ensure that an acceptable appraisal report is prepared for the Department. Yet, no purpose is served in a review appraiser's repeated rejection of and return of an appraisal report. Any exceptions by the review appraiser should be noted on the first return of the appraisal to the appraiser, and the appraiser should adequately respond to the review appraiser's request. There may be rare occasions when a second return is necessary. If the report is still unacceptable, the review appraiser will proceed in accordance with this Section. Any appraisal report that is not corrected by an appraiser or any extended disagreements between the appraiser and the review appraiser should be brought to the attention of and discussed with the Appraisal Supervisor, who will consult with the Operations Manager on an as-needed basis.

3-6.4 Appraisal Revisions after Accepted Review

Sometimes after the review appraiser's approved estimate of compensation is prepared, conditions that result in a change in values arise that did not exist or were not considered at the time of the original appraisal. To determine whether there is a need for reappraisal or revision of the approved value, the Appraisal Supervisor should be consulted on:

- major revisions required by a change in design;

- a parcel split or combination into new ownerships;
- loss by fire, flood or other casualty;
- removal/addition of improvements to the property;
- changes in the trend of the market in the area involved; or
- other circumstances affecting value.

Minor changes may be addressed in a revised appraisal review submitted by the review appraiser or the District Right-of-Way Supervisor.

If the review appraiser requests the appraiser to consider the changed conditions and the impact on the appraisal report, the appraisal update should contain the reason for the change, revised compensation, appropriate attachments and a new certification. The review appraiser will submit a revised Form RWA-109 for the changes.

3-6.5 Condemnation Appraisal Report Reviews

Subsequent appraisals prepared for condemnation purposes generally are guided by the attorney handling the case for the Department. The review appraiser should seek legal advice before proceeding. The review appraiser should review the report for compliance with Department appraisal requirements and make a decision whether the appraisal is acceptable or not. The review appraiser should not make any changes to the appraisal report. After consultation with legal counsel, any concerns of the review appraiser regarding the appraisal or the appraisal report will be noted and corrections and/or revisions requested from the appraiser.

Acceptance of the appraisal report will be noted by marking "Approved For Condemnation" and having the review appraiser date and sign it. Approved for condemnation will mean that the appraisal report is acceptable to the review appraiser without qualification.

3-6.6 Cooperative Reviews, Other Federal, State or Local Agencies

From time to time, the Department is asked to assist local government agencies or other State agencies by reviewing appraisals for them. The agency involved should provide, through the Appraisal Supervisor, any specific instructions regarding its requirements for appraisals and appraisal reviews. The review appraiser must understand the applicable authority and any implications on the valuation process.

So that the review appraiser may satisfy him/herself as to the validity and credibility of the conclusions contained therein, the appraisal report must be prepared using

accepted appraisal techniques; must contain the various elements, data, analysis and adjustments; and must explain, in sufficient depth, the logic and judgment used. This would include the provision for the review appraiser to verify sales data, cost data, capitalization rates, income and expense data, etc., used in the report.

The review appraiser should prepare a separate narrative review report, with appropriate comments, on the appraisal submitted to the agency. Except when approved by the Appraisal Supervisor, the review appraiser is not to solicit changes in the appraisal report. The review appraiser may limit the conclusions of the review to whether the report is acceptable (accept) or not acceptable (reject).

Certified review appraisers should determine whether or not the Jurisdictional Exception provisions of **USPAP** are applicable.

3-6.7 Fee Appraiser Oversight

Staff review appraisers may be assigned the responsibility for supervision over fee appraisers. Review appraisers are to review appraisals for compliance with contract requirements and to ensure that values are appropriately supported. All fee appraisers should be aware that this Chapter and FHWA requirements dictate appraisal policy and procedure.

Note all contacts with fee or specialty appraisal personnel along with information pertaining to assignment dates, due dates, extensions, revision requests or any other pertinent information.

3-6.8 Hazardous Waste and Contaminated Properties

When a contaminated property is to be acquired, the review appraiser's determination of current fair market value should not be written until a clean-up plan and associated cost estimate has been developed and approved by the Department.

A site that is known to be contaminated or a site adjacent to a known contaminated site should not be appraised as if clean without a reference to the contamination. Appropriate assumptions and limiting conditions must be made, and the appraiser's investigation should include research for "stigma" (i.e., public perception of the potential diminution in the property's market value that remains after the contamination has been eradicated or mitigated).

Also, see Section 3-3.5.

3-6.9 Inspection of Properties

The review appraiser should be as familiar with the subject property and associated comparable sales as is reasonable. When a review appraiser is assigned an appraisal in which the Appraisal Supervisor deems it impractical to inspect physically the subject property or comparable sales, the review appraiser must address the merits of the presentation of the data included in the appraisal report. This will require appropriate assumptions pertaining to and disclosure of the limitation within the review report.

3-6.9.1 Subject Properties

The review appraiser should inspect the subject property, whenever practical. If the review appraiser is unable to inspect the property, outline the reason within the appraisal review report. Inspect any structures to be acquired or impacted by the acquisition from the exterior and interior.

3-6.9.2 Comparable Sales

Comparable sale properties are to be inspected whenever practical. If the review appraiser is unable to inspect the comparable sale property, outline the reason within the appraisal review report. Comparable sales should receive sufficient inspection to ensure the validity of their application to any appraisal report. Improved comparable sales should be inspected with similar detail as that applied to the subject property.

3-6.10 Property Owner's Appraisal

When a property owner obtains an appraisal and makes this report available to the Department, the Appraisal Supervisor or review appraiser should review the report in order to determine if it should be considered in further negotiations.

If the report contains pertinent information that should be considered in the valuation of the subject property, the review appraiser may bring this information to the attention of the appraiser, or the review appraiser may supplement the review. If the property is in condemnation status, advise the Department's attorney handling the case of the new information. The review appraiser is to prepare a separate report, with appropriate comments, for the appraisal submitted by/for the property owner. The review appraiser is not to solicit changes in the appraisal report or make changes through the appraisal review report. The review appraiser must indicate if the appraisal report would be acceptable or not acceptable.

3-6.11 Quality Control

The review appraiser provides the quality control to ensure that the information in the appraisal report is accurate and appropriate. The appraiser should be aware of all of the potential readers and users of the report, as well as the fact that the report is part of the public domain and may be disseminated.

Once an appraisal has been submitted for review, express all significant questions or comments relating to appraisals in writing either through memorandum or formal appraisal review report. All question or comment memoranda will become part of the Appraisal Section Working File. Retention of these comments will assist managerial personnel in evaluating appraiser performance. All responses or updates of appraisal reports are to be similarly retained.

3-6.12 Reconciliation and Consistency of Appraised Values

When multiple appraisals are initially required for the same property, the review appraiser should not make the determination of just compensation until all appraisals are considered acceptable. This does not mean that all appraisals present the same value, but that the appraisals fall within an acceptable tolerance and range of values.

The review appraiser will consider both reports in establishing the just compensation. When reconciling divergent appraisal reports or establishing an independent estimate of value, the review appraiser must provide a written explanation sufficient to convey the basis for the approved amount.

One of the most important jobs of the review appraiser is to develop some degree of consistency among values assigned to adjacent properties and properties throughout the project. There should be clear distinction between land use or value for variations between approved values on the project. This is especially important when multiple appraisers are involved on the same project. The review appraiser is to ensure consistent, equitable and uniform application of values over any project, while giving consideration for differences between various comparable sales and subject properties. This should not be interpreted as establishing a single value for a class of property when there are definite and recognizable differences involved.

3-6.13 Uneconomic Remnants

Uneconomic remnants are those remainder properties of such size, shape or use that they lack value or utility to the owner. If the remainder has no value or utility to the

owner, the Department must offer to acquire the remainder. It is the responsibility of the review appraiser to make the determination based on the recommendation of the appraiser or the review appraiser's own analysis whether or not the remainder is an uneconomic remnant. Separate just compensation for the parcel should be shown on Form RWA-109 for each of the following:

- The owner elects to retain the remnant.
- The owner elects to sell the remnant to the State.

Also, see Section 3-2.27.

3-6.14 Rounding

Rounding of values in the appraisal review should be based on the following information and the guidelines established in Section 3-2.32.

When multiple parcels of a larger parcel under the same ownership are evaluated under 1 appraisal, only 1 final rounding of value should be made. Each parcel should then be identified separately on Form RWA-109 for the components that lead up to the final determination of just compensation.

When multiple parcels contained within a single appraisal do not comprise a larger parcel, they should not be summed and rounded together. The parcels should be separated, or the review appraiser should generate a separate Form RWA-109 for each parcel.

3-6.15 Stamping of Reports

3-6.15.1 Appraisal Section Working File Copy

When a copy of the appraisal report, draft pages and associated correspondence is received, it is to be retained in the Appraisal Section Working File. These documents are to be stamped "Appraisal Section Working File" at or near the upper right-hand corner of the first page.

The Appraisal Section Working File copy of all sales catalogs, project reports and appraisal reports are to be date-stamped upon receipt. Any documentation received during the review process that applies to the appraisal under review should be date-stamped. Date stamps are to be placed at the upper right-hand corner on the first page

of each document or on the first page of any revision or additional insert. The date stamp is to indicate month, day and year.

Any original page of the Working File Appraisal Report will be marked "SEE REVISION," and the replacement page will be marked "REVISION." The page marked "REVISION" will be inserted in front of the page marked "SEE REVISION." Stamps using red ink are to be placed along the bottom of the page.

3-6.15.2 Master File Copy

A final version of the approved appraisal report is to be retained and stamped with the green stamp indicating "MASTER FILE COPY" at or near the upper right-hand corner of the first sheet. The Appraisal Review Report (Form RWA-108 or RWA-109) is to be attached to the master file copy. This copy is then forwarded to the Real Estate Services Section.

3-6.15.3 Acquisition Agent (Negotiator)

Copies of the appraisal and review reports will be forwarded to the District Right-of-Way Supervisor or appropriate supervisor. At or near the upper right-hand corner of the first sheet each report is to be stamped "ACQUISITION AGENT."

3-6.15.4 Reviewed and Approved

When an appraisal report has been revised and updated for court testimony, a signed stamp of "REVIEWED AND APPROVED" can be considered as approval for either settlement or court testimony. A stamp using red ink should be at or near the upper right-hand corner of the first sheet.

3-6.15.5 Rejected

When an appraisal report is determined to be not acceptable, the Appraisal Section Working File should be stamped "REJECTED" at or near the upper right-hand corner of the first sheet. All other copies of the appraisal report are to be returned to the appraiser.

3-6.16 Unacceptable Appraisal Reports

When the review appraiser finds the appraiser's analysis, opinions or conclusions in the appraisal report to be unreasonable, inadequately supported or inappropriate, the review appraiser must state the reasons for disagreement. If there is so much disagreement that the review appraiser cannot accept the analysis, opinions and conclusions, or when the review appraiser is not able to make adjustments either due to the degree of correction needed, restrictions outlined in this Chapter or restrictions placed on the assignment, the report must be recommended for rejection.

A narrative review report clearly indicating and supporting the reasons for rejection is required for any unacceptable appraisal report. This narrative review report should be submitted to the Appraisal Supervisor, who may do any of the following:

1. If the Appraisal Supervisor agrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may ask the appraiser assigned to the parcel or another appraiser to re-appraise the property, or may ask a review appraiser to appraise the property.
2. If the Appraisal Supervisor disagrees with the review appraiser's recommendation for rejection, the Appraisal Supervisor may:
 - write their own review, accepting responsibility for the appraisal report;
 - assign a different review appraiser to review the appraisal; or
 - ask the appraiser to take another look at the property and reconsider his or her appraisal.

Any report that contains information that is perceived to be intentionally falsified is to be rejected unless the review appraiser, with approval of the Appraisal Supervisor, wishes to make the effort and take the responsibility to correct any falsification. NOTE: Any staff appraiser or staff review appraiser who intentionally provides false information will be subject to disciplinary action, up to and including termination. Joint appraisals by 2 or more persons are not acceptable. Also, see Section 3-6.3 of the ***MDT Right-of-Way Operations Manual***.

3-6.17 Review Appraiser's Reports

The Bureau has adopted the use of standardized forms for most of the appraisal review function. The forms provide a consistent review base and summary for acquisition

agents and others within the Department. Review appraiser comments are encouraged when appropriate or necessary to aid in clarification of the appraisal and review.

A copy of the review report is to be attached to each copy of the appraisal report. A copy also is to be forwarded to the staff appraiser who completed the report.

3-6.17.1 Review Appraiser's Report (Form RWA-108)

Form RWA-108 has been developed for appraisal reports that are associated with properties that are not required by the Department for right-of-way acquisition. This form is used when the Department is acquiring land for maintenance or other non-right-of-way purposes.

3-6.17.2 Review Appraiser's Report (Form RWA-109)

Form RWA-109 has been developed for the review of appraisals associated with right-of-way acquisition. The review appraiser can edit the report by deleting data lines that are not required and adding lines where needed.

A single form is used for any of the reports generated for right-of-way appraisals. Form RWA-109 provides a recapitulation of the compensation to be made and is not intended to be an outline of how the determination of compensation was generated. If the review appraiser feels that an outline must be developed, it should be done within the context of the form sheet.

Attach a copy of the review report to each copy of the appraisal. Also, forward a copy of the review report to the staff appraiser who completed the appraisal report.

Except when multiple appraisals are to be used to establish value, complete Form RWA-109 for each appraisal. When multiple appraisals are used, a single Form RWA-109 is to be prepared with reference to all appraisals. Attach a copy of Form RWA-109 to each appraisal report.

3-7 FEE APPRAISALS

3-7.1 Need

Fee appraisers or contract appraisers are employed when:

- staff personnel are not available to perform the desired work in a timely manner,
- the complexity or unusual nature of an assignment requires the service of an experienced individual who is qualified to perform this type of appraisal, or
- the Department's interests will be better served through the employment of contract appraisal personnel.

All fee appraisers generally are hired by the Right-of-Way Bureau and not through the Consultant Design Section. When a design consultant also contracts to perform right-of-way appraisals and acquisition activities, the consultant's right-of-way personnel should work directly with Right-of-Way Bureau personnel and not with the Consultant Design Section.

3-7.2 Request for Appraisal or Appraisal Review Services

Prior to entering into an Appraisal or Appraisal Review Services Agreement, the Appraisal Supervisor may elect to solicit proposals for completing specific assignments or for providing general services to the Department (i.e., term contracts). The solicitation will be in the form of a Request for Appraisal Services Proposal (Form RWA-162).

The Appraisal Supervisor will maintain a listing of available qualified appraisers from which selection may be made. Selection will be made based on evaluation criteria established by the Appraisal Supervisor, the Operations Manager and the Acquisition Manager.

3-7.3 Appraisal Services Agreement

3-7.3.1 Agreement

All fee appraisers will be employed through the Appraisal or Appraisal Review Services Agreement (Form RWA-164). The contract agreement will be completed by either the Appraisal Supervisor or the review appraiser, signed by the Appraisal Supervisor and the contract appraiser, and approved by the Bureau Chief. If the appraisal contract is

for court purposes, Legal Services should be consulted to coordinate appraisal instructions, rules of law, due dates and any other special appraisal instructions.

3-7.3.2 Appraisal Management or Oversight

Appraisal service contracts typically will be managed by the review appraiser assigned to the project or parcel. In applicable situations, the Appraisal Supervisor may elect to manage unique or unusual contracts.

Review appraisers are to review appraisals for compliance with contract requirements and to ensure that values are appropriately supported. All fee appraisers/review appraisers should be aware that this Chapter and FHWA requirements dictate appraisal policy and procedure.

Note all contacts with fee or specialty appraisal personnel along with information pertaining to assignment dates, due dates, extensions, revision requests or any other pertinent information.

3-7.4 Appraisal Reviews

3-7.4.1 Payment

All appraisal reports must be reviewed and accepted prior to full payment for services rendered under any contract. Payment terms must be spelled out in the Appraisal or Appraisal Review Services Agreement. Generally, 50% will be paid after delivery to the Department of the appraisal report and an acceptable compliance check. The final 50% will be paid upon approval of all the reports covered by the agreement.

3-7.4.2 Review Appraiser Comments and Appraiser Responses

The review appraiser may elect simply to prepare a formal review of the available reports or the review appraiser may provide comments, observations or questions to obtain clarification from the appraiser of the contents or findings of the appraisal report. If the review appraiser considers the comments significant, all copies of the appraisal report, with the exception of the Appraisal Section copy, will be returned to the fee appraiser.

Responses by the fee appraiser will be noted by making appropriate changes to the appraisal report for the benefit of any reader/user. Forward a copy of any modified

page to the Appraisal Section for appropriate replacement in the Appraisal Section copy of the appraisal report. The fee appraiser is responsible for the finished version of any other copies of the appraisal report submitted under the contract agreement.

The appraiser may elect to ignore any comments or questions deemed insignificant or that do not warrant change within the body of the appraisal report.

When the appraiser responds in writing to the review appraiser's comments, observations or questions, and the information provides clarity for the appraisal report, then the original correspondence and the response must be added to the formal review report. Attach a copy of the review report and addenda to each copy of the appraisal report.

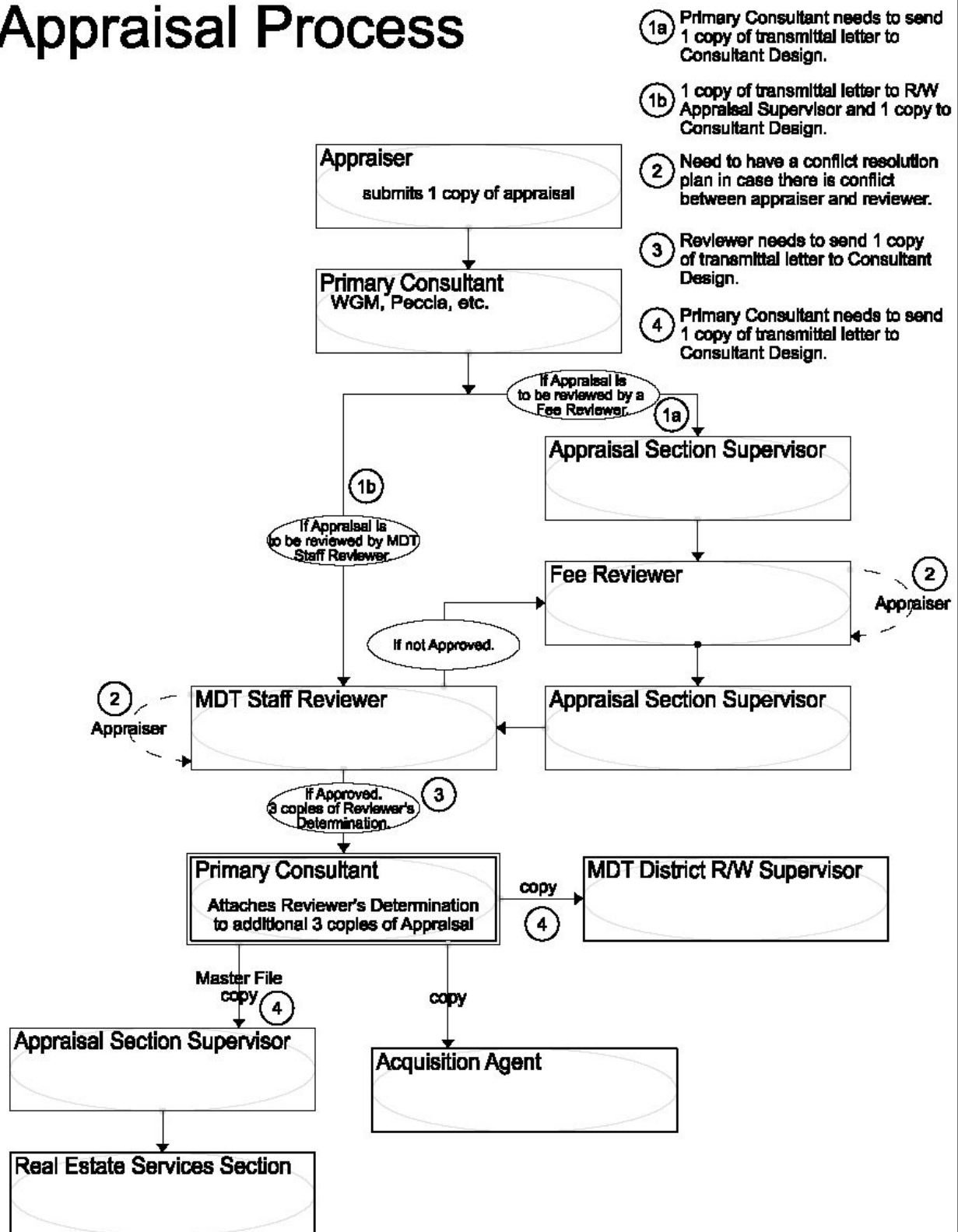
Any appropriate response needed for understanding the appraisal report should be added by making appropriate corrections within the context of the appraisal report.

3-7.5 Scope of Work

Attach the Scope of Work (Form RWA-102) to the Appraisal Services Agreement. The proposed scope of work submitted by the appraiser will be reviewed for reasonableness of fees and types of appraisal reports to be submitted. If acceptable, the scope will be approved. If the appraiser and review appraiser cannot agree on an acceptable scope, bring the issue to the attention of the Appraisal Supervisor, who will consult with the Operations Manager on an as-needed basis. The Scope of Work is to be signed by the appraiser and the review appraiser.

3-7.6 Consultant Appraisal Process Flowchart

Appraisal Process



3-8 DEFINITIONS

3-8.1 Sources

The primary sources for definitions of the terms used in this chapter are MDT practice and industry common usage. The definitions are arranged alphabetically.

3-8.2 Definitions

When used in this *Operations Manual*, words and terms have the following meanings:

1. **BIA**. Bureau of Indian Affairs.
2. **Bureau**. Right-of-Way Bureau.
3. **CFR**. *Code of Federal Regulations*.
4. **Department/MDT**. Montana Department of Transportation.
5. **FHWA**. Federal Highway Administration.
6. **Legal Services**. Montana Department of Transportation Legal Services.
7. **MCA**. *Montana Code Annotated*.

For the purpose of this Chapter, the terms “appraisal,” “appraisal report” and “valuation” mean the same thing.

3-9 REFERENCES

1. ***Americans with Disabilities Act of 1990 (ADA)***, 42 ***United States Code*** 12101 et seq.
2. ***Code of Federal Regulations***, 49 **CFR** 24.105(c), Appraisal and establishment of just compensation for tenant-owned improvements.
3. ***Constitution of the State of Montana***, Article II, Section 29, Eminent Domain.
4. ***Dictionary of Real Estate Appraisal***, Stephanie Shea-Joyce (Editor), 1993.
5. ***Historical Register***, Montana Historic Preservation Office, 1410 8th Avenue, P.O. Box 201202, Helena, MT 59620-1202, Tel.: 406-444-7717, FAX: 406-444-6575.
6. ***Marshall & Swift***, www.marshallswift.com.
7. ***Montana Code Annotated***, 60-4-109, Irrigable Lands Rendered Unusable – Unpaid Construction Costs.
8. ***Montana Code Annotated***, 60-4-203, Conduct of sale.
9. ***Montana Code Annotated***, 70-1-105, Real or personal [property].
10. ***Montana Code Annotated***, 70-1-106, Real property defined.
11. ***Montana Code Annotated***, 7-14-4202, Payment of damages resulting from change of grade.
12. ***Montana Code Annotated***, 70-30-301(b)(c), Hearing – judge to preside – determinations by condemnation commissioners.
13. ***Montana Code Annotated***, 70-30-302, Assessing compensation – date and measure – interest.
14. ***Montana Code Annotated***, 70-30-313, Current fair market value.
15. ***Montana Department of Transportation Metric Conversion Manual***, 199?
16. ***Montana Department of Transportation Road Design Manual***, Section 18.3, December 2000.

17. ***State Highway Commission v Renfro***, 161 Mont. 251, 256, 505 P.2d 403, and 406 (1974).
18. ***State versus Keneally***, 142 Mont. 256, 384 P.2d 770 (1963).
19. ***Taylor Grazing Act***, 43 ***United States Code*** 315
20. ***The Appraisal of Real Estate***, The Appraisal Institute, current edition.
21. ***Title VI, Civil Rights Act of 1964***, codified in 42 United States Code Chapter 21.
22. ***Uniform Appraisal Standards for Federal Land Acquisition (UAS)***, Interagency Land Acquisition Conference, 2000 (interim edition).
23. ***Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)***, 42 ***United States Code*** 4601 et seq.
24. ***Uniform Standards of Professional Appraisal Practice (USPAP)***, The Appraisal Foundation, current edition.
25. ***United States Code***, 15 ***USC*** 580(L).